AMERICAN
STATE PAPERS
BEARING ON
SUNDAY LEGISLATION

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AMERICAN STATE PAPERS

'Tis Liberty alone that gives the flower
Of fleeting life its luster and perfume;
And we are weeds without it. All constraint
Except what wisdom lays on evil men,
Is evil: hurts the faculties, impedes
Their progress in the road of science, blinds
The eyesight of discovery; and begets,
In those that suffer it, a sordid mind,
Bestial, a meager intellect, unfit
To be the tenant of man's noble form."

— *Cowper.*

LEGISLATIVE - EXECUTIVE - JUDICIAL

AMERICAN STATE PAPERS

BEARING ON SUNDAY LEGISLATION

REVISED AND ENLARGED EDITION

COMPILED AND ANNOTATED BY

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FOREWORD BY

JUDGE THOMAS M. COOLEY

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To the Supporters of the Constitution
of the United States as It Is
and
to the Lovers of Justice, Right, and
Liberty Everywhere
AMERICAN STATE PAPERS
Is Dedicated by
The Editors

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EDITOR'S PREFACE.

Political history an interesting study.

POLITICAL history is a most interesting study; and of all the political history of the world, no other has been so full of interest, so pregnant with matter for thought, as that of America for the last two centuries. The irrepressible spirit of liberty in the early Americans and the philosophical ideas on government characteristic of the times, united to bring forth a government more grand, more in accordance with human rights, more in harmony with the principles of Christ, than any the world had ever seen.

Inception of American institutions.

There is, however, a reaction taking place. And the revival of the religio-political ideas of mediæval times, the practical operation of which, as declared by the United States Senate, "has been the desolating scourge of the fairest portions of the Old World," calls for the republication of American State Papers which have marked the successive steps in our political history.

Religio-political ideas being revived.

Republication of American State Papers demanded.

The influence of Roger Williams,[1] of Washington, of Jefferson, of Madison, and of their fellow-states-

Influence of characteristic Americans.

1 From the publications of the Narragansett Historical Society, we take the following:

"Roger Williams, says Professor Gervinus, in his recent 'Introduction to the History of the Nineteenth Century' (Translated from the German. H. G. Bohn, London, 1853, page 65), founded, in 1636, a small new society in Rhode Island, upon the principles of entire liberty of conscience, and the uncontrolled power of the majority in

Roger Williams.

men, has been felt throughout the world. The free institutions established by them have made the name "America" a synonym of "liberty." The famous Bartholdi "Statue of Liberty," presented to America by France, is a fitting tribute to the Utopia of nations.

"Statue of Liberty" a fitting tribute to America.

The world has marked with astonishment the unprecedented advancement of American institutions, founded, as they are, upon theories more in accordance with the principles of absolute civil and religious liberty — theories which, previous to the establishment of American institutions, had existed only in the schools of philosophy — theories evidently deducible from the principles of abstract justice and incontrovertible logic, but which had never had practical application.

American institutions.

A new nation, proud of Anglican liberty,— proud of our English political philosophers and statesmen of the past few centuries, who have so manfully asserted human rights,— proud of insuring to the *minority* their rights, was the first to free itself from the superstitious ideas which had made governments restrict or entirely disregard the rights which

America the first to free herself from superstition.

Theories of the schools of philosophy.

A vain prophecy.

Influence of Rhode Island's free institutions.

secular concerns. . . . The theories of freedom in church and state taught in the schools of philosophy in Europe, were here brought into practice in the government of a small community. It was prophesied that the democratic attempts to obtain universal suffrage, a general elective franchise, annual parliaments, entire religious freedom, and the Miltonian right of schism, would be of short duration. But these institutions have not only maintained themselves here, but have spread over the whole Union. They have superseded the aristocratic commencements of Carolina and New York, the high-church party in Virginia, the theocracy in Massachusetts, and the monarchy throughout America; they have given laws to one quarter of the globe; and, dreaded for their moral influence, they stand in the background of every democratic struggle in Europe."

they were instituted to protect.[1] In striking contrast with the older governments, America has stood before an astonished world as a refuge for the persecuted, a home for the oppressed, the land of the free. Shall these institutions which have thus benefited humanity be supplanted in this enlightened age by the church-and-state dogmas of past centuries?

Contrast of governments.

Shall American institutions be maintained?

It is true that some of the States have never given up the idea that religion and the state must have some legal connection.[2] But, in contrast with this,

Some States still retain un-American ideas.

[1] Bancroft very justly says:

"Vindicating *the right of individuality* even in religion, and in religion above all, the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained in Judea. It left the management of temporal things to the temporal power; but the American Constitution, in harmony with the people of the several States, withheld from the federal government the power to invade the home of reason, the citadel of conscience, the sanctuary of the soul; and, *not from indifference,* but that the infinite spirit of eternal truth might move in its freedom and purity and power." "History of the Formation of the Constitution," book v, chapter 1.

Right of individuality.

Divine assertion of liberty.

Motive underlying our political system.

[2] In Pennsylvania, North Carolina, South Carolina, Arkansas, Mississippi, Tennessee, and Maryland all persons who deny the existence of a Supreme Being, and in Pennsylvania and Tennessee, those who deny a "future state of rewards and punishments," are excluded, by Constitutional provision, from holding public office. See Part V of this work, and Cooley's "Constitutional Limitations," fifth edition, page 197, note. The Constitutions of Ohio, North Carolina, and Arkansas declare that "religion, morality, and knowledge" are "essential to good government." The Constitution of New Hampshire still authorizes the State Legislature to "make adequate provision . . . for the support and maintenance of public Protestant teachers of piety, religion, and morality;" and that of Vermont declares that "every sect or denomination of Christians ought to observe the Sabbath, or Lord's day, and keep up some sort of religious worship." The Constitution of Delaware asserts that "it is the duty of all men frequently to assemble together for the public worship of Almighty God;" and that of Connecticut, while providing that no person shall by law be compelled to join or support any congregation, church, or religious association, says that "every person now belonging to such congregation, church, or religious association, shall remain a member

Relics of church and state.

Sabbath observance and public worship declared to be duties.

Church-membership regulated.

our national government declares for absolute separation of church and state, its Constitution forbidding religious tests being made as a qualification for office under the government, and prohibiting Congress from making any law "respecting an establishment of religion, or prohibiting the free exercise thereof." The

thereof until he shall have separated himself therefrom, *in the manner herein provided.*" Massachusetts declares it to be the right and "the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being." The Constitutions of North Dakota, Washington, and Wyoming, adopted in 1889, and that of Oklahoma, adopted as late as 1907, provide that "perfect *toleration* of religious sentiment shall be secured." Not religious *toleration,* but religious *liberty,* is the true American idea regarding freedom in matters of religion. Toleration implies an established religion. A thorough application of the true principle of religious liberty would rid these Constitutions of these inconsistencies, and repeal every Sunday law now on the statute books of every State in the Union having such laws.

Four State Constitutions declare for "toleration."

The early colonial laws and documents, especially, contain numerous provisions against heretics, infidels, and dissenting sects. They also abound in recognitions of God, the Trinity, and the like, and provide for the punishment of persons daring to speak or act contrary to the prevalent ideas on the subject of religion. Present-day writers, and even judges, sometimes refer to these laws and documents as declarative of "American" principles. One might as well point to the "Star Chamber" as an institution of Anglican liberty, or to slavery and the "Dred Scott" decision as proper samples of American liberty, as to cite these early colonial enactments as correctly representing the true American principles of liberty. These laws were the result of erroneous ideas brought over by the colonists from the Old World.

Early colonial religious laws not representative of true American idea of liberty.

Nothing is more evident than that the American idea of liberty — the equal rights characteristic of our institutions — is absolutely incompatible with the forfeiture of property because one may refuse to go to church or to observe a day which certain other persons consider sacred; or with the hanging of Quakers, the lashing of women with bared backs through the streets in midwinter, or with the banishment of such men as Roger Williams — all on account of exercising their God-given rights in matters of conscience. American principles are the principles that frowned down that religious bigotry and intolerance which had held the world captive for ages.

What American principles are.

American government is founded upon human rights, upon the rights given to every man by his Creator, upon the inalienable rights of life, liberty, and the free exercise of one's faculties. Pagan and Mahometan, Gnostic and Agnostic, Jew and Gentile, Catholic and Protestant, are all entitled to the unrestricted exercise of their equal rights, and to an impartial protection by the government in such exercise.[1] These are the principles characteristic of American institu-

Foundation of American government.

All equally entitled to the exercise of their rights.

American principles are the principles that have made even such religious laws as still remain on our statute books, for the most part, dead letters. American principles are the principles that say to the unbeliever, You have as much right to your opinion as the believer has to his; that say to the believer in other religions, You have as much right to speak against the Christian religion in which you do not believe as the Christian has to speak against a religion in which he does not believe; that say to the Sabbatarian, You have as much right to work on Sunday as the Sunday-keeper has to work on Saturday; or, as Herbert Spencer says, every man has the right to "the fullest liberty to exercise his faculties compatible with the exercise of like liberty by every other man"—a more exact and philosophical statement of the self-evident truth expressed in the Declaration of Independence, that "All men are created equal."

1 The celebrated "Sunday Mail Report" adopted by the United States Senate in 1829, gave expression to this doctrine in the following language:

"It is not the legitimate province of the legislature to determine what religion is true, or what false. Our government is *a civil* and *not a religious institution*. Our Constitution recognizes in every person the right to choose his own religion, and to enjoy it freely, without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others." See page 237.

Province of government.

Rights of individuals.

The "Sunday Mail Report," adopted by the House of Representatives in 1830, also declared:

"The Constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a single individual than of a whole community." See page 254.

Jews have same rights as Christians.

tions; these were the principles of the founders of our government; these are the principles of American liberty, and the ideals of American and Anglican philosophy.[1]

"Liberty enlightening the world."

As an outgrowth of these principles, we have in America "Liberty enlightening the world." But this liberty will exist only in name if we enact and enforce laws that are contrary to these principles and to our constitutional rights, and unworthy a free and enlightened people.

Effect of retrogradation.

Object of this work.

It is to set forth the true American idea — absolute separation of religion from the state — absolute freedom for all in religious opinions and worship — that these Papers have been collected and republished.

The reader will find in this work a large number of most interesting and important state documents on this question. Part I deals with the "Colonial Period." In this, samples are given of the erroneous

[1] Burke, in his famous speech on "Conciliation with America," attributed the American spirit to the fact that the colonists were of English descent, and "therefore not only devoted to liberty, but to liberty according to English ideas, and on English principles."

American liberty a division of Anglican liberty.

Anglican institutions.

Distinctive American institutions.

Francis Lieber, in his work "On Civil Liberty and Self-Government" (London, 1853), page 214, says: "American liberty belongs to the great division of Anglican liberty [contradistinguished from Gallican liberty]. It is founded upon the checks, guarantees, and self-government of the Anglican tribe. The trial by jury, the representative government, the common law, self-taxation, the supremacy of the law, publicity, the submission of the army to the legislature, and whatever else has been enumerated, form part and parcel of our liberty. There are, however, features and guarantees which are peculiar to ourselves, and which, therefore, we may say constitute American liberty. They may be summed up, perhaps, under these heads: Republican federalism, strict separation of the state from the church, greater equality and acknowledgment of abstract right in the citizen, and a more popular or democratic cast of the whole polity."

ideas of legislation and of the province of civil government brought over by the colonists from the Old World, together with a sketch of the life of that man, who, more than any other, laid the foundation for the full and complete development in the national government of the principle first enunciated by Jesus Christ, of the complete separation of church and state, or of religion and civil government. Parts II and III contain the history, in documentary form, of the development of this principle during the "Federation" and "National" periods. In these will be found some of the most profound utterances to which American minds have ever given expression — veritable masterpieces of English and sound logic — bearing on the rights of conscience and the province and limits of civil authority.[1] Part IV contains some important

Scope of the work by parts.

[1] It was the same spirit of liberty which produced these and hundreds of other similar documents, that during our early history either banished from the statute books or relegated to the background our Sunday laws, compulsory attendance at church, laws against Unitarians, infidels, witches, Baptists, Quakers, Sabbatarians, etc. But now, in certain localities, we see some of these very laws being revived, and new and more stringent ones being demanded. Many cases of prosecution of Sabbatarians for Sunday work have come to the editor's notice within the past few years, among them being ordained ministers of the gospel. For over a century the national government uniformly maintained but one position — uncompromising opposition to Sunday legislation or any legislation whatever giving one sect or one form of religion preference over another. But the States have been divided on the question, the statute books of most of these containing Sunday laws, and by far the larger number of the judicial decisions in them upholding these laws. Hence, decisions have been inserted in this work both in favor of and against the constitutionality of Sunday laws.

Revival of intolerant laws.

Position of national government.

Position of State governments.

In a few instances text matter has been inserted in these parts, which, strictly speaking, cannot be called State Papers; such as the sketch of Roger Williams, and the consideration of the question "Maryland or Rhode Island, Which?" in Part I; "A Bit of His-

"Court Decisions" regarding Sunday laws and religious instruction in the public schools. Part V contains the provisions in the State Constitutions guaranteeing religious liberty, and the various Sunday laws now upon the statute books of the United States; Part VI deals with the "Operation of Sunday Laws;" and Part VII is entitled "Sunday Laws Before the Bar of Reason." In the Appendix will be found the Declaration of Independence, the Constitution of the United States, and other valuable matter.

Valuable matter in appendix.

WILLIAM ADDISON BLAKELY.

tory," in Part II; and the resolution passed by the Baltimore National Lord's Day Convention, of 1844, presided over by John Quincy Adams, and the American Anti-Sunday-Law Convention held in Boston, in 1848, under the leadership of William Lloyd Garrison, in Part III. But the nature and importance of these, it was thought, justified making them a part of the chronological documentary history of the subject under consideration. They were national in character and significance.

FOREWORD BY JUDGE COOLEY.

American common-law principles.

This is a country of religious liberty, not of religious toleration merely. Every person is entitled to worship God according to the dictates of his own conscience, under the obligations which rest upon all alike, that public order shall be respected, and the requirements of morality and decency observed. Whenever the law, either in terms or by the method employed in its enforcement, goes beyond this, and undertakes to compel observances that are only required by particular creeds, no matter how numerous may be those who consider them of divine obligation, it becomes tyrannical and destructive of a fundamental principle of American liberty. It is also tyrannical when it punishes as a public offence the management of a citizen's private affairs in such a manner as his own conscience approves, taking care in doing so neither to wrong nor to disturb those of his fellow-citizens who differ with him in their views. If in their opinion the course he pursues must be displeasing to the Ruler of the world, the question involved belongs not to human tribunals, and it is the purpose of our constitutional system that human laws administered by imperfect human instruments shall not assume to deal with it. This is a commonplace in the United States of America, but it cannot be too often repeated or too distinctly borne in mind.

Tyrannical statutes.

Interference with private affairs.

Limitation of governmental jurisdiction.

Thomas M. Cooley.

Ann Arbor, Michigan, June 16, 1893.

Free Grace and Free Will.

Freedom and reason make brave men;
Take these away, what are they then? —
Mere groveling brutes, and just as well
The beasts may think of heaven or hell.

'Tis man's free will if he believe;
' Tis God's free will him to receive.
To stubborn willers, this I'll tell,
'Tis all free grace and all free will.

Know, then, that every soul is free
To choose his life, and what he'll be;
For this eternal truth is given —
That God will force no man to heaven.

He'll call, persuade, direct him right,
Bless him with wisdom, love, and light,
In nameless ways be good and kind,
But never force the human mind.

— *Anon.*

INTRODUCTION.

American jurisprudence.

The fundamental principle of American jurisprudence is that stated in the Declaration of Independence, that government is instituted to secure the rights of man. These rights are simply artificial divisions of the law of nature. Now that which is to be secured — man's rights — precedes that which secures them — civil government. It has been truly said that "before man made us citizens Great Nature made us men." These rights are also superior to the provisions of government. Blackstone says: "This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."

Law of nature.

Law of justice the superior law.

In the universal recognition (whether acknowledged or not) of this principle — that there is a superior standard of justice — lies the force of charges that certain legislative acts are unjust. For injustice is non-conformity to the law of justice — which is the natural law. If the legislature were omnipotent, if there were no superior law, if it could make right wrong and wrong right, then any law it might make could not be said to be unjust. Its own acts would be the standard of justice. Right would then be conformity to human law, and wrong, violation of human law. The absurdity of such a position is evi-

Need of an absolute standard.

dent — the claim would be preposterous. As long as the maxim, *Humanum est errare,* is true, there must be some invariable standard by which all human acts, public as well as private, are to be judged. This standard is variously termed the law of justice, the law of nature, natural rights, etc., and has reference to those abstract principles of justice and right imprinted more or less clearly on the sense of every man.

Law of nature in declarations of rights.

It is this law that receives formal recognition in our declarations of rights — declarations simply of certain parts of this superior law; — not that these rights are any more sacred when thus "declared" than they were before, but they are thus rendered apparent and more susceptible of protection. That they are simply a part of this higher law, and are so recognized, is proved by the provision so generally inserted in declarations of rights, that "the enumeration herein of certain rights shall not be construed to deny or disparage others retained by the people"— a direct acknowledgment that these rights inhere in the people, and that such declaration is simply an express acknowledgment of the most important principles of this law. Theoretically, it adds no force whatever to the rights. Such declaration is not dissimilar to the frequent instances where the State Constitutions re-enact certain provisions of the national Constitution. Such re-enactment does not make the provision any more binding; nor would a provision to the contrary annul the superior law. The State Constitution, in so far as it contravened the provisions of the national Constitution, would simply be void. Blackstone states this principle in his commentaries: "Those rights, then, which God and nature have established, and are therefore called natural rights, such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any addi-

Rights not created by Constitutions.

Rights inherent in man.

tional strength when declared by the municipal laws to be inviolable. On the contrary, no human legislature has the power to abridge or destroy them."

Rights recognized constitutionally to render them more secure.

It is true that when recognized in our Constitutions, our rights are more easily secured, and hence this recognition was insisted on by Jefferson[1] and other early American statesmen. But because this recognition may not exist, one's rights cannot therefore be legitimately trampled upon. Even if the Constitution did not prohibit the taking of private property for public use without just compensation, the legislature could not therefore legitimately do it. Nor can the legislature rightfully take the property of A and give it to B. There is no court in the land that would enforce such a decree. It would violate this superior law, and therefore be absolutely void. Hence, as government is instituted to secure the natural rights of man, and as our Constitutions, in their declarations of rights, recognize this law and limit the powers of government accordingly, any law which deprives an individual of his rights is unconstitutional.

Deprivation of any natural right unconstitutional.

In accordance with this principle, Jefferson declared: "Our legislators are not sufficiently apprised of the rightful limits of their power, that their true office is to declare and enforce only our natural rights and duties, and to take none of them from us. . . . The idea is quite unfounded that on entering into society we give up any natural right." This doctrine of primal rights is coeval with courts of justice, and was unequivocally asserted and re-asserted centuries ago by England's most eminent Chief Justices. Said the distinguished Lord Hobart: "Even an act of Parliament, made against natural equity, as to

Legislative limitations.

No natural rights surrendered.

[1] In Query xvii, of his "Notes on Virginia," he says: "It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united."

Law of nature immutable.

make a man judge in his own case, is void in itself; for *jura naturæ sunt immutabilia,* and they are *leges legum.*" [1]

Thus this American principle is simply that which has been declared again and again by the greatest jurists which have ever adorned the English bench. In "Elements of Right and of the Law" (section 520), Mr. Smith says: "It is a well-established principle of the American law, that an act of Congress in excess of the constitutional powers of the federal government is absolutely void; and so far as the direct infringement of private rights is concerned, this principle is in fact enforced by the courts; but in questions merely political, there is in general no practical means of restraining the execution of the law. Nevertheless such a law is void, and not only affords no legal justification to any one seeking to enforce it, but every subordinate officer, and indeed every private individual, has the right to disobey it, and will be vindicated in doing so by the courts."

Enforcement of this principle.

[1] Hobart, page 87; see also Bishop's First Book of the Law, chapter 9, section 90. This principle, it seems, was well established; for Lord Coke cited numerous cases and said: "It appears in our books that in many cases the common law [that is, the courts] will control acts of Parliament, and sometimes adjudge them to be utterly void. For when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it and adjudge such act to be void. . . . Because it would be against common right and reason, the common law adjudges the said act of Parliament as to that point void. . . . The opinion of the court (in An. 27, Hilary Term 6, Annuity 41) was that this statute was void." Dr. Bonham's case, 8 Coke's Reports, 118. See also Calvin's case, 7 Coke's Reports, 12–14, 25; 2 Brownlow's Reports, 198, 265; Hardres's Reports, 140; 2 Coke's Institutes, 588.

Acts against natural rights absolutely void.

In Calvin's case (page 14) Lord Coke declared emphatically: "The very law of nature itself, never was nor could be altered or changed. And therefore, it is certainly true that *jura naturalia sunt immutabilia.* And herewith agreeth Bracton, book 1, chapter 5, and Doctor and Student, chapters 5 and 6. And this appeareth plainly and plentifully in our books."

Law of nature cannot be altered.

Unanimity of opinion.

The foregoing is a brief summary of the reasons and authorities (though only a few out of many) establishing the principles which permeate these American State Papers. The individual retains his natural rights, and government is limited accordingly. And as every individual equally has the natural right to worship whom he pleases and on what day he pleases, so long as he does not interfere with this same liberty in others; or to refrain from worshiping altogether; any human law interfering with this right, is, under our Constitutions, void; it matters not whether it be a Sunday law, a law to compel church attendance, or a law requiring any other religious observance; if it interferes with the right of a single individual, it is unconstitutional and absolutely void.[1]

Application of rights.

Nature of interference immaterial.

It is true that our judiciary have not always had a clear conception of this principle, and numerous decisions are flatly contradictory, as is illustrated by the two positions on the constitutionality of religious laws presented in this work. But this is because in some cases precedents have been followed, not principles. Law, by some, has been regarded as a bundle of previous decisions, rather than as a science founded, like other sciences, on the immutable law of nature. The erroneousness of such a view must be

Contradictory opinions.

Precedent and principle.

[1] This was the verdict of the twentieth and twenty-first Congresses (1829 and 1830) touching the matter of Sunday legislation, as set forth in the following language: "Congress acts under a Constitution of delegated and limited powers. The committee look in vain to that instrument for a delegation of power authorizing this body to inquire and determine what part of time, or whether any, has been set apart by the Almighty for religious exercises. On the contrary, among the few provisions it contains, is one that prohibits a religious test, and another which declares that Congress shall pass no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . . It is perhaps fortunate for our country that the proposition should have been made at this early period while the spirit of the Revolution yet exists in full vigor."

Mansfield's statement.

obvious to all who have given it reflection. "The law of England," Lord Mansfield observed, "would be an absurd science were it founded upon precedent only."[1] And Lord Coke repeatedly declared that the law "is the perfection of reason." "Reason," said he, "is the life of the law; nay, the common law itself is nothing else but reason."[2]

Progress in the science of law.

In the onward march of civilization and in the advancement of science in general, progress has also been made in our system of jurisprudence; — not that principles have changed, for the law of nature is both unchangeable[3] and immutable, but in this advancement clearer views of the principles of justice have been obtained.[4] Progress is especially seen in connection with religious legislation and religious decisions. In America the dogma that Christianity is a part of the common law has, by eminent jurists and statesmen, been repudiated. Sunday laws have been declared to be unconstitutional. Religious proclamations by national executives were held by Jefferson and Madison to be out of place; and the latter also contended that public chaplaincies were an illegitimate departure from American principles. To the extent that judges and legislators incline more to justice and

Law of nature immutable.

Church-and-state ideas repudiated in America.

[1] Cited by Kent in his "Commentaries on American Law," volume i, page *477.

[2] Coke upon Littleton, section 976. Mr. Justice Powell, in Coggs *v.* Bernard, 2 Lord Raymon's Reports, 911, makes a similar statement: "Let us consider the reason of the case, for nothing is law that is not reason."

[3] "One rule can never vary, viz., the eternal rule of natural justice." Chief Justice Lee, in Omychund *v.* Barker 1 Atkinson's Reports, 46.

[4] This is strikingly illustrated in the fact that "there are over one thousand cases to be pointed out in the English and American books of reports which have been overruled, doubted, or limited in their application." Kent's "Commentaries on American Law," volume i, page *477.

Cases overruled.

reason, and less to the precedents dictated by bigotry and custom, government will become still more liberal, and Sunday laws, and all other religious laws, will go the way that similar laws have gone.

Objects of government.

In order to fulfil the objects of government, every man must be insured "the fullest liberty to exercise his faculties compatible with the exercise of like liberty by every other man." Discussing the Federal Constitution in the Virginia convention, Patrick Henry said: "You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. . . . The great and direct end of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil." [1]

Departures from fundamental principles.

This is the principle asserted in the Declaration of Independence, when it says, "All men are created equal;" and the repeated departures from it in our religious laws which discriminate against the Sabbatarian [2] and the unbeliever are a standing reproach to our government, and a constant travesty on justice.

So long as the idea prevails that there must be some legal connection between church and state,— that the state cannot exist without religion, nor religion without the state,— we may expect that such laws will remain upon our statute books. So long as men read history so little, or to so little purpose, as not to learn that any union of religion and the state

1 Elliot's "Debates on the Federal Constitution," volume iii, page 43 *et seq.*, 53 *et seq.*, 651. See pages 146, 147.

Injustice to Sabbatarians.

2 "The Jew who is forced to respect the first day of the week when his conscience requires of him the observance of the seventh also, may plausibly urge that *the law discriminates against his religion*, and by forcing him to keep a second Sabbath in each week, *unjustly*, though by indirection, *punishes him for his belief*." Cooley's "Constitutional Limitations," page *476.

— any prescribing of men's faith by human laws — is a dangerous experiment, and an illicit and contaminating alliance, and, in the end, can result only in evil, we may expect to see a repetition of the bigotry and intolerance which have disgraced the history of past ages. And so long as men who profess to believe the Bible, read it so little, or to so little purpose and profit, as not to learn from the record of the deliverance of Israel from Egyptian bondage and oppression, the three Hebrews from the fiery furnace, and Daniel from the lions' den, the lesson that God abhors religious intolerance and oppression; that with religion civil government can of right have nothing whatever to do further than to protect liberty of conscience; and that, as Adam Clarke says, "the church which tolerates, encourages, and practices persecution, under the pretense of concern for the purity of the faith, and zeal for God's glory, is not the church of Christ, and no man can be of such church without endangering his salvation;"[1] — so long as this is so, we may expect to see professed Christians making use of the power of the state for the furtherance of their ends, and for the suppression of views not in accordance with their own.

Until lessons of sacred and profane history are learned, intolerance and persecution will be seen.

A perusal of the early Sunday laws of the American colonies will demonstrate how little acquainted were the first settlers of this country with the genuine principles of religious liberty and separation of church and state. See Part I. And an examination of the numerous Sunday laws upon our statute books at the present time (see Part V), a list which is constantly increasing, will show how the old error of a union of church and state still clings to the country, and the weapons of persecution still remain for the convenient use of the bigot as occasion may suggest or arise for their wielding.

A perusal of past and present American Sunday laws shows old error still retained.

[1] Comments on Luke 14:23.

PART I.

Colonial Period.

"We speak with great satisfaction of the fact that our ancestors came to this country to establish freedom of religion. Well, if you are to be exact, they came to establish freedom for their own religion, and not the freedom of anybody else's religion. The truth is that in those days such a thing as freedom of religion was not understood."— *President Taft.*

"Freedom of conscience was, in that age, an idea yet standing on the threshold of the world, waiting to be ushered in; and none but exalted minds — Roger Williams and Penn, Vane, Fox, and Bunyan — went forth to welcome it."— *Bancroft.*

EARLY AMERICAN SUNDAY LAWS.[1]

VIRGINIA.

(America's First Sunday Law, 1610.)

PENALTY OF DEATH FOR NON-ATTENDANCE AT CHURCH ON SUNDAY.[2]

Every man and woman shall repair in the morning to the divine service and sermons preached upon the Sabbath day, and in the afternoon to divine service, and catechising, upon pain for the first fault to lose their provision and the allowance for the whole week following;[3] for the second, to lose the said allowance and also be whipt; and for the third *to suffer death.*[4]

America's first Sunday law, 1610.

[1] These are the real "blue-laws." They are not taken from the "Peter's Code," but from the legal codes and original statute books as indicated by the references given. All of the thirteen original colonies are represented here except South Carolina, and this is represented by duplication, as indicated in note under Georgia. See page 47.

[2] "Articles, Laws, and Orders, Divine, Politique, and Martial, for the Colony in Virginia: first established by Sir Thomas Gates, Knight, Lieutenant-General, the 24th of May, 1610. Again exemplified and enlarged by Sir Thomas Dale, Knight, Marshall, and Deputie Governour, the 22d of June, 1611." Reprinted at Hartford, in 1876.

[3] This was at the time that the Virginia plantation held all things in common; and if the Sabbath was not observed according to the requirements of the government, all supplies were cut off.

[4] "The first settlers [of Virginia] were emigrants from England, of the English church, just at a point of time when it was flushed with complete victory over the religions of all other persuasions. Possessed, as they became, of the powers of making, administering, and executing the laws, they showed equal intolerance in this country with their Presbyterian brethren who had emigrated to the northern government. . . . Several acts of the Virginia Assembly, of 1659, 1662, and 1693, had made it penal in parents to refuse to have their children baptized; had prohibited the unlawful assembling of Quakers; had made it penal for any master of a vessel to bring a Quaker into the State; had ordered those already there, and such

Persecution in Virginia.

LAW OF 1623-1624 REQUIRING CHURCH ATTENDANCE.[1]

Law of 1623-24.

Whosoever shall absent himself from divine service any Sunday, without an allowable excuse, shall forfeit a pound of tobacco, and he that absenteth himself a month shall forfeit 50 lbs. of tobacco.

FIVE SHILLINGS, FIFTY POUNDS OF TOBACCO, OR TEN LASHES FOR NON-CHURCH ATTENDANCE.[2]

Law of 1705.

If any person of full age shall absent from divine service at his or her parish church or chapel, the space of one month (except such Protestant dissenters as are exempted by the act of Parliament made in the first year of King William and Queen Mary) and shall not, when there, in a decent and orderly manner continue till the service be ended: and if any person shall on the Lord's day, be present at any disorderly meeting, gaming, or tippling, or travel upon the road, except to and from church (cases of necessity and charity excepted) or be found working in their corn, tobacco, or other labor of their ordinary calling, other than is necessary for the sustenance of man or beast; every

as should come thereafter, to be imprisoned till they should abjure the country,— provided a milder penalty for the first and second return, but *death* for their third. If no capital executions took place here, as did in New England, it was not owing to the moderation of the church, or spirit of the legislature, as may be inferred from the law itself; but to historical circumstances which have not been handed down to us." Jefferson's "Notes on Virginia" (1788), page 167.

In the same year, 1610, a law was enacted in Virginia against blasphemy, the offender, for the first offence, to suffer "severe punishment;" for the second, "to have a bodkin thrust through his tongue;" and for the third, "be brought to a martial court, and there receive censure of death." Similar laws, both as regards Sunday observance and blasphemy, were enacted by Massachusetts in 1698, by Connecticut about the same time, and by Maryland in 1723. See pages 39-41.

Punishment for blasphemy.

[1] Hening's "Statutes at Large," volume i, page 123.

[2] Mercer's "Laws of Virginia," page 320.

such person being lawfully convicted of any such default or offence, by confession or otherwise, before one or more justice or justices of the county, within two months after such default or offense made or committed, shall forfeit and pay five shillings, or fifty pounds of tobacco for every such default or offence; and on refusal to make present payment, or give sufficient caution for payment thereof at the laying of the next parish levy, shall, by order of such justice or justices, receive, on the bare back, ten lashes, well laid on.[1]

Five shillings or fifty pounds of tobacco.

Ten lashes well laid on.

LABOR ON SUNDAY FORBIDDEN UNDER PENALTY OF ONE DOLLAR AND SIXTY-SEVEN CENTS.[2]

If any person on the Sabbath day shall himself be found laboring at his own, or any other trade, or calling, or shall employ his apprentices, servants, or slaves in labor, or other business except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall forfeit the sum of one dollar and sixty-seven cents, for every such offense, deeming every apprentice, servant, or slave, so employed, and every day he shall be so employed, as constituting a distinct offence.[3]

Act passed Dec. 26, 1792.

[1] From these statutes it is clearly to be seen that the great object of their enactment was church attendance and the religious observance of the day.

[2] "Certain Acts of the General Assembly of the Commonwealth of Virginia," page 112.

[3] Since religion was disestablished in Virginia and the other original States, the later American Sunday laws have not required church attendance; but they have continued to call Sunday "the Sabbath day," and to forbid ordinary labor, business, trade, recreation, and amusements as formerly on that day — the prerequisites to church attendance and to the religious observance of the day. They are religious, and their object is still religious; they simply fall short of specifying in words, and plainly requiring, their *real object*. The idea still prevails that the aid of civil law is essential to Sabbath observance, just as formerly the tithing laws, or state taxation for

Church attendance not required.

MASSACHUSETTS.

PROPHANCON THE LORDS DAY.

Law of 1650.

Further bee it enacted that whosoever shall prophane the Lords day by doeing any servill worke or any such like abusses, shall forfeite for every such default tenn shillings or be whipte.[1]

PRESUMPTUOUS SUNDAY DESECRATION TO BE PUNISHED BY DEATH.[2]

Law from codification of 1671.

9. This court taking notice of great abuse, and many misdemeanours, committed by divers persons

the support of the clergy, was thought essential to the maintenance of an efficient ministry, as is so clearly expressed in the following "Act for the better support and maintenance of the clergy," passed by Virginia in 1696:

Law of 1696 for the provision for the clergy.

"Whereas a competent and sufficient provision for the clergy will be the only means to supply this Dominion with able, faithful, and orthodox ministers, and the people edified: and whereas the law now in force, instituted, glebes to be laid out, in making such provision, doth seem very deficient and uncertain, . . . be it further enacted . . . that all and every minister and ministers, in all and every parish and parishes in the dominion, incumbent in the said parish or parishes, and therefore officiating as minister or ministers, shall have and receive, for his or their maintenance, the sum of sixteen thousand pounds of tobacco, besides their lawful perquisites; and that it shall and may be lawful for the vestry or vestries of any parish or parishes, and they are, by virtue of this act, authorized and empowered to raise and levy the same in their respective parish or parishes." "Acts of Assembly Passed in the Colony of Virginia from the Year 1662," page 189.

Who believes in such legislation now?

But who in this country believes in this now? Who believes that "competent and sufficient provision for the clergy" by the state is "the only means," or even the best means, of providing the people with "able, faithful, and orthodox ministers"? Why then should State laws be thought necessary to proper Sabbath observance? Like the tithing laws, these, too, should be repealed, for both belong to religious establishments, and are consistent only with the idea of a union of church and state.

[1] "The Compact, Charter, and Laws of the Colony of New Plymouth. Boston, 1836."

[2] "The Book of the General Laws of New Plimouth, published by authority of the General Court held at Plimouth, June 6, 1671," chapter iii, "Criminals," sections 9, 10; reprinted at Boston, 1836.

in these many wayes, Profaning the Sabbath or Lords-day, to the great dishonour of God, Reproach of Religion, and Grief of the Spirits of God's People,

Do therefore Order, That whosoever shall profane the Lords-day, by doing unnecessary servile Work, by unnecessary travailing, or by sports and recreations, he or they that so transgress, shall forfeit for every such default forty shillings, or be publickly whipt: But if it clearly appear that the sin was proudly, Presumptuously and with a high hand committed, against the known Command and Authority of the blessed God, such a person therein despising and reproaching the Lord, *shall be put to death or grievously punished at the Judgement of the Court.* Punished by death.

10. And whosoever shall frequently neglect the public Worship of God on the Lord's-day, that is approved by this Government, shall forfeit for every such default convicted of, ten shillings, especially where it appears to arise from negligence, Idleness or Prophaneness of Spirit. Neglect of of worship.

PENALTY FOR TRAVELING ON THE LORD'S DAY.

To prevent prophanation of the Lords day by foraignors or any others unessesary travelling through our Townes on that day; It is enacted by the Court that a fitt man in each Towne be chosen unto whom whosoever hath nessesity of travell on the Lords day incase of danger of death or such nessesitous occations shall repaire and makeing out such occations satisfyingly to him shall receive a Tickett from him to pas on about such like occations which if the traveller attend not unto; It shal be lawfull for the Constable or any man that meets him to take him up and stop him untill hee be brought before authoritie or pay his fine for such transgression as by law in that case is provided; and if it after shall appear that Law of 1682.

his plea was falce then may hee be apprehended att another time and made to pay his fine as aforsaid.[1]

AN ACT FOR THE BETTER OBSERVATION AND KEEPING THE LORD'S DAY.[2]

Act of Aug. 22, 1695.

That all and every person and persons whatsoever, shall on that day carefully apply themselves to duties of religion and piety, publicly and privately; and that no tradesman, artificer, laborer, or other person whatsoever, shall upon land or water, do or exercise, any labor, business, or work of their ordinary calling; nor use any game, sport, play, or recreation on the Lord's day, or any part thereof (works of necessity and char-

The Puritan tithingman.

1 "The tithingman also watched to see that 'no young people walked abroad on the eve of the Sabbath,' that is, on a Saturday night [after sundown]. He also marked and reported all those 'who lye at home,' and others who 'prophanely behaved,' 'lingered without dores at meeting time on the Lordes Daie,' all the 'sons of Belial strutting about, setting on fences, and otherwise desecrating the day.' These last two classes of offenders were first admonished by the tithingman, then 'sett in stocks,' and then cited before the Court. They were also confined in the cage on the meeting-house green, with the Lord's Day sleepers. The tithingman could arrest any who walked or rode too fast a pace to and from meeting, and he could arrest any who 'walked or rode unnecessarily on the Sabath.' Great and small alike were under his control, as this notice from the 'Columbian Centinel' of December, 1789, abundantly proves. It is entitled 'The President and the Tything man:'

President Washington arrested.

"'The President [George Washington], on his return to New York from his late tour through Connecticut, having missed his way on Saturday, was obliged to ride a few miles on Sunday morning in order to gain the town at which he had proposed to have attended divine service. Before he arrived, however, he was met by a tithing man, who commanding him to stop, demanded the occasion of his riding; and it was not until the President had informed him of every circumstance and promised to go no further than the town intended that the tithing man would permit him to proceed on his journey.'" Earle's "Sabbath in Puritan New England," pages 74, 75.

2 "Acts and Laws of the Province of Massachusetts Bay, from 1692–1719," page 15.

(works of necessity and charity only excepted) nor be present at any concert of music, dancing, or public diversion, show or entertainment, nor use any sport, game, play, or recreation, on the Lord's day, or any part thereof, upon penalty of a sum not exceeding twenty shillings, nor less than ten shillings, for every offense.

. . . . . .

And although it is the sense of this Court, that the time commanded in the sacred Scriptures to be observed as holy time, includes a natural day, or twenty-four hours; yet whereas there is a difference of opinion concerning the beginning and ending of the Lord's day, among the good people of this commonwealth, and this court being unwilling to lay any restriction which may seem unnecessary or unreasonable to persons of sobriety and conscience:

Difference of opinion for beginning and ending day.

SECTION 4. *Be it therefore enacted by the authority aforesaid*, That all the foregoing regulations, respecting the due observation of the Lord's day, shall be construed to extend to the time included between the midnight preceding and the sun setting of the same day.

Hours of day limited.

. . . . . .

And whereas the public worship of Almighty God, is esteemed by Christians as an essential part of the due observance of the Lord's day, and requires the greatest decency and reverence for a due performance of the same:

Public worship essential to due observance of the day.

SECTION 6. *Be it therefore enacted*, That any person, being able of body and not otherwise necessarily prevented, who, shall for the space of three months together, absent him or herself, from the public worship of God, on the Lord's day (provided there be any place of worship at which he or she can conscien-

Church attendance required.

tiously and conveniently attend) shall pay a fine of ten shillings.[1]

CONNECTICUT.

PROPHANATION OF THE LORD'S DAY.[2]

Law of 1656.

Whosoever shall profane the Lord's day, or any part of it, either by sinful servile work, or by unlawful sport, recreation, or otherwise, whether wilfully or in a careless neglect, shall be duly punished by fine, imprisonment, or corporally, according to the nature, and measure of the sinn, and offence. But if the court upon examination, by clear, and satisfying evidence find that the sin was proudly, presumptuously, and with a high hand committed against the known command and authority of the blessed God, such a person therein despising and reproaching the Lord, *shall be put to death,* that all others may feare and shun such provoking rebellious courses.

Death for presumptuous Sunday desecration.

. . . . . .

Loath to reform.

[1] In nothing, it seems, are men so loath to believe that changes can be made or reforms instituted as in matters of religion and religious legislation. From the "Baptist Encyclopedia," by William Cathcart, D. D., page 1133, we take the following:

"John Adams actually argued that it was against the consciences of the people of his State to make any change in their laws about religion, even though others might have to suffer in their estate or in their personal freedom to satisfy Mr. Adams and his conscientious friends. And he declared that they might as well think they could change the movements of the heavenly bodies as alter the religious laws of Massachusetts." See "Life and Works of John Adams," by Charles Francis Adams, volume xi, page 399, and this work, page 699.

John Adams and Massachusetts establishment.

And yet the whole religious establishment of Massachusetts, save the State Sunday laws, the germ of it all, was done away with in 1833, only a few years after the death of Mr. Adams.

[2] "Nevv-Haven's Settling in New England. And some lawes for Government: Published for the use of that Colony. Though some of the orders intended for present convenience, may probably be here-

AN ACT FOR PREVENTION AND PUNISHING THE PROPHANATION OF THE SABBATH, OR THE LORD'S DAY.[1]

Law of 1721.

Whereas, notwithstanding the liberty by law granted to all persons to worship God in such places as they shall for that end provide, and in such manner as they shall judge to be most agreeable to the word of God; and notwithstanding the laws already provided for the sanctification of the Lord's day, or the Christian sabbath, many disorderly persons, in abuse of that liberty and regardless of those laws, neglect the publick worship of God on the said day, and prophane the same by their rude and unlawful behaviour.

Sanctification of Lord's day.

Attending public worship required.

Be it therefore enacted by the Governor, the Council and Representatives, in General Court assembled, and by the authority of the same, That whatsoever person shall not duly attend the publick worship of God on the Lord's day in some congregation by law allowed, unless hindered by sickness or otherways necessarily detained, and be thereof convicted before an assistant or justice of the peace, either by confession or sufficient witnesses, or being presented to such authority for such neglect, shall not be able to prove to the satisfaction of the said authority that he or she has attended the said worship, shall incur the penalty of five shillings money for every such offense.

after altered, and as need requireth other Lawes added. London, 1656." Reprinted at Hartford, 1876. The laws of the adjoining colonies were copied from the laws of Massachusetts, which accounts for their likeness here, although the Plymouth laws have been copied from a book of a later date.

1 The Public Records of the Colony of Connecticut from May, 1717, to October, 1725, with the Council Journal from May, 1717, to April, 1726. Transcribed and edited, in accordance with a resolution of the General Assembly, by Charles J. Hoadly, Librarian of the State Library. Hartford, 1872. Pages 248, 249.

To remain at home.

Be it also further enacted by the authority aforesaid, That whatsoever person shall go from his or her place of abode on the Lord's day, unless to or from the publick worship of God, attended or to be attended upon by such person in some place by law allowed for that end, or unless it be on some other work necessary then to be done, and be thereof convicted as aforesaid, shall incur the penalty of five shillings money for every such offense.

. . . . . .

To be sent to house of correction.

And it is hereby further enacted, That whatsoever person shall be present at any unlawful meeting, or be guilty of going from the place of his or her abode, and unlawful behaviour on the Lord's day, contrary to this act, and being thereof convicted and fined as aforesaid, and shall refuse or neglect to pay his or her fine, or tender to the assistant or justice of the peace, before whom such person shall be convicted, such security as the said authority shall judge sufficient for the payment of it, within the space of one week after such conviction, such assistant or justice of the peace shall immediately cause such convicted persone to be sent to the house of correction, there to lye at his or her own charge and be employed in labour, not exceeding a month for any one offense, and less as the offense is, at the discretion of the judge; the profit of such labour to be to the town treasury, except paying the charge of prosecuting the delinquent; and the sheriff of the county to see that said delinquent do so labour as aforesaid.

Review and appeal denied.

And it is hereby enacted by the authority aforesaid, That all grandjurymen, constables, selectmen, or committees of parishes, shall duly present to some assistant or justice of the peace all persons guilty of any breach of this act; and that no delinquent convicted by this act shall have the liberty of any review or

appeal; and that all fines accruing by this act shall be paid into the treasury of the town where such offense is committed, and for the use of the said town.

Provided nevertheless; and it is hereby enacted by the authority aforesaid, That no person shall be punished for any breach of this act, unless he or she be prosecuted for it within one month after the commission of the same.

Prosecution to be within a month.

MARYLAND.

AN ACT FOR SANCTIFYING AND KEEPING HOLY THE LORD'S DAY, COMMONLY CALLED SUNDAY.[1]

From laws of 1692-1715.

Forasmuch as the sanctification and keeping holy the Lord's Day commonly called Sunday, hath been and is esteemed by the present and all the primitive Christians and people, to be a principal part of the worship of Almighty God, and the honor due to His holy name; Be it enacted, . . . That from and after the publishing of this law, no person or persons whatsoever within this Province, shall work or do any bodily labor or occupation upon the Lord's Day, commonly called Sunday, . . . (the works of absolute necessity and mercy always excepted) . . . nor shall abuse or profane the Lord's Day by drunkenness, swearing, . . . And if any person or persons . . . . shall offend in any or all of these premises, he . . . . shall forfeit and pay for every such offense the sum of one hundred pounds of tobacco.[2]

Work forbidden that day may be kept holy — this a principal part of worship.

Fine one hundred pounds of tobacco.

1 "Maryland Laws 1692–1715," page 7.

2 Surely no one after reading the title and text of this early Sunday law of Maryland could for a moment question the fact of its being religious, or deny that the reason that "work" and "bodily labor" were forbidden by it on Sunday was with a view to "sanctifying and keeping holy" the day, and this upon the assumption that such sanctification and keeping of the day is "a principal part of the worship of Almighty God." The title and preamble to the act make

Law manifestly religious.

AN ACT TO PUNISH BLASPHEMERS, SWEARERS, DRUNKARDS, AND SABBATH-BREAKERS.[1]

Law of October, 1723.

SECTION 10. "*Be it enacted,* That no person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and that no person having children, servants, or slaves, shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day, (works of necessity and charity always excepted,) nor shall suffer or permit any children, servants, or slaves, to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations; and that every person transgressing this act, and being thereof convict by the oath of one sufficient witness, or confession of the party before a single magistrate, shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid."[2]

Fine two hundred pounds tobacco.

Present Sunday laws fail to state reason for forbidding labor.

this very plain. The State Sunday laws of to-day prohibit work on Sunday just as this law did, but give no *reason* for doing so. The reason has simply been omitted in them. The framers of these early Sunday laws, when church and state were united, made no secret of stating the reason for them. Apart from this, the present Sunday law of Maryland reads practically the same as did this one of two centuries ago. See page 587. And who will say that in *intent* one is not as religious as is the other?

[1] "Bacon's Laws of Maryland. 1765," chapter 16 of Laws of 1723, section 10.

[2] Section 4 of this act provided "where the said fines shall not be immediately paid on conviction, that it shall and may be lawful for the magistrates, or other officers aforesaid, and they are hereby required, to order the offender, not being a freeholder, or other reputable person, to be whipped, or put in the stocks." Section 5 provided that "no offender shall receive above thirty-nine lashes, or be kept in the stocks above three hours, upon any one conviction."

Whipping, or three hours in stocks.

Section 1 of this act of 1723 provided for the punishment of blasphemers, and reads as follows:

Law against blasphemy.

"That if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blaspheme or curse God, or deny our Saviour Jesus Christ to be the Son of God,

PENNSYLVANIA.

AN ACT TO RESTRAIN PEOPLE FROM LABOR ON THE FIRST DAY OF THE WEEK.[1]

Act of Oct. 14, 1705.

To the end that all people within this province may with the greater freedom devote themselves to religious and pious exercises, be it enacted, etc., that according to the example of the primitive Christians, and for the ease of the creation, every first day of the week, commonly called Sunday, all people shall abstain from toil and labor, that whether masters, parents, children, servants or others, they may the better dispose themselves to read and hear the Holy Scriptures of truth at home, and frequent such meetings of religious worship abroad, as may best suit their respective persuasions. And that no tradesman, artifi-

Opportunity to read Scriptures and attend church.

or shall deny the Holy Trinity, or any of the Persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offence, be bored through the tongue and fined twenty pounds sterling to the lord proprietor to be applied to the use of the county where the offence shall be committed, to be levied on the offender's body, goods, and chattels, lands or tenements, and in case the said fine cannot be levied, the offender to suffer six months' imprisonment without bail or mainprise; and that for the second offence, the offender being thereof convict as aforesaid, shall be stigmatized by burning in the forehead with the letter B and fined forty pounds sterling to the lord proprietor, to be applied and levied as aforesaid, and in case the same cannot be levied, the offender shall suffer twelve months' imprisonment without bail or mainprise; and that for the third offence, the offender being convict as aforesaid, shall suffer death without the benefit of the clergy."

Branding with letter B.

Third offence death.

By act of Congress in 1801, when the District of Columbia was taken over as the territory of the national capital, this whole act, consisting of fifteen sections, with the rest of the laws of Maryland considered applicable to the District, was made a part of the laws of the District, and has remained upon the statute books of the District in codes compiled as late as 1868. In a decision rendered January 21, 1908, the Court of Appeals of the District set the Sunday law aside as "obsolete" and "repealed by implication." See page 519.

Maryland laws transferred to District of Columbia.

1 "Laws of Pennsylvania, 1700–1714," pages 35–37.

cer, workman, laborer, or other person whatsoever, shall do or exercise any worldly business or work of their ordinary callings, on the first day, or any part thereof (works of necessity and charity only excepted) upon pain that every person so offending shall for every offense forfeit the sum of twenty shillings.[1] . . . Provided always, that nothing in this act contained shall extend to prohibit the dressing of victuals in families, cook shops or victualing-houses, or to watermen landing their passengers on the first day of the week, nor to butchers their killing and selling of meat, or fishermen from selling fish on the first day of the week in the fourth, fifth, and sixth months, called June, July, and August; nor to the crying of

Exceptions.

[1] There can be no mistaking the object of this law. In its very opening words it states its "end" to be that all the people within the province may "with greater freedom devote themselves to religious and pious exercises," "read and hear the Holy Scriptures," and "frequent such meetings" as best suited their respective "persuasions." To this end no "worldly business" or work at "ordinary callings" was permitted. The modern Sunday laws, enacted since the old colonial religious establishments were abandoned, do not specify their object so clearly, but they do still forbid "worldly business," and work at "ordinary" and "secular" callings. Who will say that it is not for the same purpose as here so plainly stated?

Object of the law religious.

This law is chapter 5 of the laws passed by the General Assembly of Pennsylvania, October 14, 1705. Chapter 1 of the same laws, passed the same day, deals with the rights of conscience, and reads as follows:

"THE LAW CONCERNING LIBERTY OF CONSCIENCE.

"Almighty God being only Lord of Conscience, Author of all divine knowledge, faith and worship, who can only enlighten the minds and convince the understanding of the people, in due reverence to his sovereignty over the souls of mankind, and the better to unite the Queen's Christian subjects in interest and affection, Be it enacted . . . that no person now, or at any time hereafter, dwelling or residing within this province, who shall profess faith in God the Father, and in Jesus Christ his only Son, and in the Holy Spirit, one God blessed forevermore, and shall acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration, and when lawfully required, shall profess and declare that they will live peacably under the civil government, shall in any case

Law concerning liberty of conscience.

milk before nine of the clock in the morning, or after five in the afternoon. Provided also, that no person shall be impeached, presented or molested for any offense before mentioned in this act unless he, or they, be prosecuted for the same within ten days after the offense committed.

Prosecution must be within ten days.

And be it further enacted, that all persons who are found drinking and tippling in ale-houses, taverns, or other public house or place on the first day of the week, commonly called Sunday, or any part thereof, shall for every offense forfeit and pay one shilling and sixpence to any constable that shall demand the same, to the use of the poor; and all constables are hereby empowered, and by virtue of their office, required to search public houses and places suspected to entertain such tipplers, and then, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks, and bind them to their good behaviour, as to him shall seem requisite.[1]

May commit to stocks.

be molested or prejudiced for his or her conscientious persuasion, nor shall he or she be at any time compelled to frequent or maintain any religious worship, place or ministry whatsoever, contrary to his or her mind, but shall freely and fully enjoy his or her Christian liberty in all respects, without molestation or interruption." "Laws of Pennsylvania, 1700–1714," page 32.

This was an evident attempt at a declaration for religious liberty; but it fell far short of the ideal. It required a religious profession, and the Sunday law, enacted the same day, the observance of a religious institution, and for religious ends.

1 Here we have a good illustration of some of the evils of Sunday legislation. The earlier part of the law made honest labor and business on Sunday a crime. This virtually put a premium upon idleness, and made it compulsory. Idleness promotes drunkenness and crime. So additional legislation was required to suppress the evils engendered by the first. The inquisitional spirit was also encouraged by this law. The constable was ordered to search public houses for tipplers on this day, but not on other days. The same evils still cling to Sunday legislation.

One evil creates another.

NEW YORK.

AN ACT AGAINST THE PROFANATION OF THE LORD'S DAY, CALLED SUNDAY.[1]

Act of Oct. 22, 1695.

Whereas the true and sincere service and worship of God, according to his holy will and commandments, is often profaned and neglected by many of the inhabitants and sojourners within this Province, who do not keep holy the Lord's day, but in a disorderly manner, accustom themselves to travel, laboring, working, shooting, fishing, sporting, playing, horse-racing, frequenting of tippling-houses, and the using many other unlawful exercises and pastimes upon the Lord's day, to the great scandal of the holy Christian faith:[2]

Profanation of day a scandal to Christian faith.

Be it therefore enacted . . . That there shall be no travelling, servile laboring and working, shooting, fishing, sporting, playing, horse-racing, hunting, or frequenting of tippling-houses, or the use of any other unlawful exercises or pastimes, by any of the inhabitants or sojourners within this Province, or by any of their slaves or servants, on the Lord's day; and that every person or persons offending in the premises shall forfeit for every offense the sum of six shillings. . . . And in default of such distress, that the party offending, to be set publicly in the stocks by the space of three hours.

Three hours in the stocks.

[1] "Laws of New York, from 1691 to 1751," pages 22, 23.

[2] The reason for prohibiting labor, pastimes, drinking, and the like on Sunday, is here plainly stated. It is not because men need physical rest one day in seven, but because "the true and sincere service and worship of God, according to his holy will and commandments, is often profaned and neglected by many, . . . to the great scandal of the holy Christian faith." The law was made to prevent the doing of things on Sunday which were considered perfectly right and proper on other days of the week, and to punish those "who do not keep holy the Lord's day." The present Sunday laws of New York are but relics of this.

To keep day holy.

NEW HAMPSHIRE.

AN ACT FOR THE BETTER OBSERVATION AND KEEPING THE LORD'S DAY.[1]

Act of July 19, 1700.

That all and every person and persons whatsoever, shall on that day carefully apply themselves to duties of religion and piety, publicly and privately:[2] and that no tradesman, artificer, or other person whatsoever, shall upon land or water, do or exercise, any labor, business, or work of their ordinary calling; nor use any game, sport, play, or recreation on the Lord's day, or any part thereof (works of necessity and mercy only excepted:) upon pain that every person so offending shall forfeit five shillings. . . .

Three hours in cage or stocks.

And in case any such offender be unable or refuse to satisfy such fine, to cause him to be put in the cage, or set in the stocks, not exceeding three hours.

GEORGIA.

AN ACT FOR PUNISHING VICE, PROFANESS, AND IMMORALITY, AND FOR KEEPING HOLY THE LORD'S DAY, COMMONLY CALLED SUNDAY.[3]

Act of March 4, 1762.

Whereas there is nothing more acceptable to God than the true and sincere worship and service, according to his holy will, and that the keeping holy of the Lord's day is a principal part of the true service of God, which in this province is too much neglected by many . . . Be it enacted . . . That all and every person and persons whatsoever, shall, on every Lord's day, apply themselves to the observation

1 "New Hampshire Acts and Laws, 1696–1715," pages 7, 8.

2 Like the law of Charles II, 1676, this law required all to "apply themselves to duties of religion and piety," both "publicly and privately." Its religious character is too apparent to need comment.

3 "Acts of General Assembly of Georgia, 1755-1770," pages 215-217.

of the same, by exercising themselves thereon in the duties of piety and true religion, publicly or privately, or having no reasonable or lawful excuse, on every Lord's day shall resort to their parish church, or some meeting or assembly of religious worship, tolerated and allowed by the laws of England, and there shall abide, orderly and soberly, during the time of prayer and preaching, on pain of forfeiture for every neglect of the sum of two shillings and sixpence Sterling.

Religious duties required.

II. That no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business or work of their ordinary callings upon the Lord's day, or any part thereof (works of necessity or charity only excepted) and that every person, being of the age of fifteen years or upwards, offending in the premises, shall, for every such offense, forfeit the sum of ten shillings. . . .

Work forbidden.

III. No drover, waggoner, butcher, higler, they or any of their servants, or any other traveller, or person whatsoever, shall travel on the Lord's day . . . except it be to the place of religious worship, and to return again, or to visit or relieve any sick person, or unless the person or persons were belated the night before, and then to travel no farther than to some convenient inn or place of shelter for that day, or upon some extraordinary occasion for which he, she, or they shall be allowed to travel under the hand of some justice of the peace of this province.

Traveling prohibited.

. . . . . .

VI. That the church-wardens and constables of each parish respectively, or any one or more of them, shall, once in the forenoon, and once in the afternoon, in the time of divine service, walk through the town of Savannah and the respective towns of this province, to observe, suppress and apprehend all offenders whatsoever contrary to the true intent and meaning

Inquisitorial work required of officers.

of this act; . . . and all persons whatsoever are strictly commanded and required to be aiding and assisting to any constables, or other officers, in their execution of this act, on the penalty of ten shillings Sterling for every refusal.

VII. . . . In case of default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeiture or penalties, that then the party offending be set publicly in the stocks for the space of two hours.[1]

Two hours in the stocks.

NORTH CAROLINA.

AN ACT FOR KEEPING HOLY THE LORD'S DAY, COMMONLY CALLED SUNDAY.[2]

Act of April 4, 1741.

Whereas in well-regulated governments effectual care is always taken that the day set apart for public worship be observed and kept holy; and, to suppress vice and immorality, Wherefore, . . . be it enacted . . . That all and every person and persons whatsoever shall, on the Lord's Day, commonly called Sunday, carefully apply themselves to the duties of religion and piety;[3] and that no tradesman, artisan, planter,

Every person to keep the day religiously.

[1] The Sunday law of South Carolina, passed December 12, 1712, was almost identical with this law; the model, in fact, it would seem, after which this was copied. See "Laws of the Province of South Carolina," Trott's edition, pages 230–234. South Carolina, however, had an earlier Sunday law, passed October 15, 1692, which was later repealed, and appears not now to be in existence.

[2] "Revisal of Acts of Assembly of North Carolina, 1773," page 68.

[3] There can be no question as to the religious character and object of this act. These are plainly stated. But, aside from the preamble, the present Sunday law of North Carolina differs little from this old colonial law. See page 616, section 2826. How then can it be denied that the present law is religious? Both call Sunday the "Lord's day," and prohibit "labor" and work at "ordinary callings," "hunting, fishing or fowling," "game, sport, or play," and the like, on that day.

Old law and present law compared.

laborer, or other person whatsoever, shall upon the land or water do or exercise any labor, business or work of their ordinary callings, (works of charity and necessity only excepted) nor employ themselves either in hunting, fishing, or fowling, nor use any game, sport, or play, on the Lord's Day aforesaid, or any part thereof, upon pain that every person so offending, being of the age of fourteen years and upwards, shall forfeit and pay the sum of ten shillings.

Fine.

NEW JERSEY.

AN ACT FOR PREVENTING PROFANATION OF THE LORD'S DAY.[1]

Act of 1693.

Whereas it hath been the practice of all societies of Christian professors to set apart one day in the week for the worship and service of God, and that it hath been and is the ancient law of England, (according to the practice of the primitive Christians) to set apart the first day of the week to that end, and finding by experience that the same good practice and law hath been greatly neglected in this province, to the grief of such as profess the Christian religion, and to the scandal thereof. Be it therefore enacted, . . . that if any person or persons shall within this province be found doing any unnecessary servile labor, or shall travel upon the Lord's day, or first day (except to some religious service or worship, or otherwise in case of necessity) or shall be found tippling, sporting or gaming, thereby profaning the Lord's day, or first day, shall upon conviction thereof before one justice of the peace forfeit and pay for every such offense six shillings.[2]

Servile work and traveling forbidden.

[1] "Laws of the Province of New Jersey, 1664–1702," page 519. This is another of the early Sunday laws of the colonies, the religious character and object of which are clearly marked.

[2] However much or little it was the practice of the "primitive Christians" to observe the first day of the week, it was not their

AN ACT FOR THE SUPPRESSION OF IMMORALITY.[1]

Act of 1704.

Whereas profaneness and immorality have too much abounded in this Province, to the shame of Christianity and the grief of all good and sober men; for the suppression whereof for the future, Be it enacted by the Governor, Council and Assembly, now met and assembled, and by the authority of the same, That all and every person and persons whatsoever within this Province who shall be convicted of drunkenness, cursing, swearing, or breaking the Lord's Day, by doing ordinary work or labor thereon (excepting works of necessity or mercy). . . . Every person so convicted shall be fined by the Justice of the Peace for drunkenness or breaking the Lord's Day, in the sum of six shillings and costs; for cursing or swearing, three shillings.

Discrimination in fines.

And be it further enacted, That no public-house keeper within this Province shall suffer any person or persons to tipple and drink in his house on the Lord's Day, especially in the time of divine worship (excepting for necessary refreshment), under the penalty of six shillings.[2]

Sunday drinking not permitted.

practice to make laws compelling others, regardless of their faith, religious convictions, or desires, to observe it. They did not seek to force their religious views and practices upon others by law. In this is shown the grievous departure of the English and early colonial Christians from "primitive" Christianity. And the sad sequel to it all is that many Christians of to-day are so little acquainted with the spirit of Christ and of primitive Christianity that they are still clamoring for these same compulsory religious laws. There is abundant evidence that for a considerable time the early Christians did not themselves observe the first day as a Sabbath, or day of rest, but continued to observe the seventh day, the day specified in the fourth precept of the decalogue, as such.

Primitive Christians did not use coercion.

1 "Acts of the General Assembly of the Province of New Jersey, 1752," page 3.

2 The reason for prohibiting tippling and drinking on Sunday is made quite apparent here. It was not simply to guard against the increased occasion and temptation to drink in consequence of the

DELAWARE.

AN ACT MORE EFFECTUALLY TO PREVENT THE PROFANATION OF THE LORD'S DAY, COMMONLY CALLED SUNDAY.[1]

Law passed Feb. 6, 1795.

Whereas the penalties which have hitherto been inflicted upon those who profane the Lord's Day, commonly called Sunday, have been found insufficient to deter many persons from such immorality; therefore, Be it enacted . . . That if any person or persons, after the passing of this act, shall do or perform any worldly employment, labor or business whatsoever, upon the Lord's Day, commonly called Sunday, (works of necessity and charity only excepted) . . . such person or persons so offending, for every such offense, shall forfeit the sum of four dollars; and upon the refusal or inability to pay the said fine and the legal costs, he or she shall be imprisoned in the public gaol of the county, for any space of time not exceeding twenty-four hours.[2]

Former laws not sufficient.

Imprisonment.

enforced idleness resulting from the general laws forbidding labor, business, and trade on that day, but to guard "the time of divine worship." No supplying of drinks on Sunday, except for "necessary refreshment," was allowed; but to do so "in the time of divine worship" was especially forbidden.

[1] "Laws of Delaware, 1797," volume ii, page 1209.

Law against blasphemy.

[2] The Delaware law of colonial times against blasphemy provided that if "wilfully or premeditately" done, the offender "be set in the pillory for the space of two hours, and be branded in his or her forehead with the letter B, and be publicly whipt, on his or her bare back, with thirty-nine lashes well laid on." "Laws of Delaware, 1797," volume i, pages 173, 174.

The religious and intolerant character of all such laws is now recognized by all. But the Sunday laws of to-day are but relics of the theocratical system of religious laws which prevailed in colonial times, and have simply been handed down to us as an inheritance from those times.

RHODE ISLAND.

AN ACT PROHIBITING SPORTS AND LABORS ON THE FIRST DAY OF THE WEEK.[1]

Law of May 6, 1679.

Be it enacted by the General Assembly, and by the authority of the same, That no person or persons within this Colony shall do or exercise any labor or business or work of their ordinary calling, nor use any game, sport, play or recreation on the first day of the week, nor suffer the same to be done by their children, servants or apprentices, (works of necessity and charity only excepted), on the penalty of five shillings for every such offense . . . together with the reasonable charges accruing thereon; and in the case such offender shall not have sufficient to satisfy the same, then to be set in the stocks by the space of three hours.[2]

Three hours in the stocks.

1 "Acts and Laws of His Majesty's Colony of Rhode-Island and Providence Plantations in America, 1730," page 27.

2 "Most sacredly," says Thomas Armitage, D. D., in his "History of the Baptists," page 649, "has Rhode Island guarded the hallowed trust [of soul liberty] committed to her charge, for no man has ever been persecuted in that sovereignty for his religious opinions and practices from its first settlement in 1636." Worthy as its history has been, and grand as were the principles of its founder on the subject of religious freedom, sad to relate, four years before his death its statute books were stained with this church-and-state Sunday law. There is no evidence, however, that Roger Williams himself had anything to do with its enactment, or that it was ever enforced to any great extent. The pride which the people of Rhode Island have manifested in fostering the principle of religious liberty is well indicated by the motto upon the large bell (weighing 2,515 pounds) in the Baptist church built at Providence, in 1774, and dedicated May 28, 1775, a little over a year before that grand old "sister bell" at Philadelphia rang out our national independence. The motto reads:

Statute-books stained by Sunday law.

Rhode Island's "Liberty Bell."

"For freedom of conscience the town was first planted;
Persuasion, not force, was used by the people;
This church is the eldest, and has not recanted,
Enjoying and granting bell, temple, and steeple."

For Roger Williams to sanction a Sunday law would have been

Sunday enforcement opposed to Roger Williams's principles.

a violation of his own expressed principles. On April 12, 1631, a letter was written to Mr. Endicott, by order of the General Court of Massachusetts, in which the court charged Williams with having "declared his opinion that the magistrate might not punish a breach of the Sabbath, nor any other [religious] offense, as it was a breach of the first table." Knowles's "Memoirs of Williams," page 45. In his "History of the Baptists," page 628, Thomas Armitage says: "He saw at a glance, that corruption and persecution must work out in America the same results that they had wrought in England. At once, therefore, he protested, as a sound-minded man, that the magistrate might not punish a breach of the first table of the law, comprised in the first four of the ten commandments."

THE RHODE ISLAND LAW REGULATING THE SUPPORT OF MINISTERS.

The Rhode Island law regulating the support of ministers.

As a sample of the religious liberty established in Rhode Island by Roger Williams, the law "regulating the maintainance of ministers within the colony," passed by the General Assembly in 1716, may be cited. The preamble recites: "There was a charter granted to this colony which contained many gracious privileges for the encouragement and comfort of the inhabitants thereof; amongst others, that of free Liberty of Conscience in religious concernment being of the most principal, it being a moral privilege due to every Christian as by His said Majesty is observed, that true piety rightly grounded upon gospel principles will give the best and greatest security to sovereignty, and will lay in the hearts of men the strongest obligations to true loyalty; and this present Assembly being sensible by long experience that the aforesaid privilege by the good providence of God having been continued to us has been an outward means of continuing a good and amicable agreement amongst the inhabitants of this colony; and for the better continuance and support thereof, as well as for the timely preventing of any and

To prevent any church gaining ascendency through use of the civil power.

every church, congregation, or society of people, now inhabiting or which shall hereafter inhabit within any part of this jurisdiction of the same, from endeavoring for prehminence, or superiority one over the other, by making use of the Civil Power for the enforcing of a maintenance for their respective ministers." Thereupon follows this law:

"That what maintainance or sallery may be thought needful or necessary by any of the churches, congregations or society of people now inhabiting or that hereafter shall and may inhabit within the

Voluntary support only.

same for the support of their respective minister or ministers, shall be raised by free contribution, and no other ways." "Digest of Rhode Island Laws, 1730," page 84.

Contrast this with the laws enacted in Virginia, Massachusetts, and other colonies for the compulsory support of the church and the clergy, and the Rhode Island principles at once appear.

FIRST OPPONENT OF SUNDAY LAWS IN AMERICA.

Character of Roger Williams.

With the dawning of American political history came an interesting character before the American people. Aggressive, fearless, liberal,—he was a type of the ideal American statesman. Talented, educated, logical,—he was well fitted for the field to which he chose to devote his life. That field was to impress correct ideas of liberty upon the early American mind.[1] His ideas were far in advance of his times, and had he not been gifted with a lovely disposition, a large heart, and a noble soul, his work could hardly have accomplished what it did. He was admired by all and loved even by his persecutors.

Advanced ideas.

Ten years had scarcely passed after the landing

[1]John Fiske, in speaking of the first decade of our nation, in "The Critical Period of American History, 1783–1789," pages 76, 77, writes the following in reference to Sunday prosecutions a century ago:

"By the revolutionary legislation of the States some progress was also effected in the direction of a more complete religious freedom. . . . The tithing-man still arrested Sabbath-breakers, and shut them up in the town-cage in the market-place; he stopped all unnecessary riding or driving on Sunday, and haled people off to the meeting-house whether they would or not. Such restraints upon liberty were still endured by people who had dared and suffered so much for liberty's sake. The men of Boston strove hard to secure the repeal of these barbarous laws, and the disestablishment of the Congregational Church; but they were outvoted by the delegates from the rural towns."

Colonial intolerance.

Efforts toward repeal.

The following extract from the diary of John Adams, himself from Massachusetts, also shows how tenaciously the New-Englanders clung to their religious laws:

"I knew they [those endeavoring to unite the colonies] might as well turn the heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts at the present day [1774] from their meeting-house and Sunday laws."

Condition in 1774.

It is these "barbarous laws" from which our early statesmen strove so earnestly to free themselves, that religio-political "reformers" are again endeavoring to fasten upon the American people.

Inauguration of the anti-Sunday-law movement.

of the pilgrim fathers, when opposition to the un-American Sunday laws began. They were unadapted to American soil. The free spirit engendered by the American wilds could ill brook the despotic religious restrictions of another country and another age. A

A pupil of Coke.

pupil of England's greatest lawyer championed the cause of liberty and led in opposition to governmental interference in religious affairs. That man was Roger Williams.

Characteristic principles.

Early in life, Coke had taught him the principles of Anglo-Saxon freedom. He had inspired in his pupil a love for truth and an admiration for abstract justice. Freedom, independence, manhood,—meant more to them than it did to the ordinary mind. Hence it was a common source from which the great defender of English liberty and the prime advocate of American freedom received their inspiration.

Beginning his anti-Sunday-law work.

Williams had no sooner landed in America than he began his opposition to Sunday laws. In 1631 Governor Winthrop writes as follows in the first volume of his journal:

Winthrop's journal.

"At a court holden at Boston (upon information to the Governor . . .) [an official letter was written from the court to this effect, saying:] that Mr. Williams . . . had declared his opinion that the magistrate might not punish a breach of the Sabbath, nor any other offense [that was religious], as it was a breach of the first table."[1]

Sunday desecration not punishable by civil magistrates.

In 1635, four years afterward, Governor Winthrop wrote in his journal as follows:

Charges against Williams.

"Month 5, 8] At the general court Mr. Williams, of Salem was summoned, and did appear. It was laid to his charge that being under question before the magistracy and churches for divers dangerous opinions, viz: (1) That the magistrate ought not to pun-

[1] Pages 52, 53.

ish the breach of the first table, otherwise than in such cases as did disturb the civil peace; (2) that he ought not to tender an oath to an unregenerate man; (3) that a man ought not to pray with such, though wife, child, etc.; (4) that a man ought not to give thanks after the sacrament nor after meat. . . . Much debate was about these things. The said opinions were adjudged by all, magistrates and ministers (who were desired to be present), to be erroneous and very dangerous."[1]

The Governor says Williams is opposed to Sunday laws.

Force's tracts, published by authority of the United States government, contain Samuel Gorton's "Simplicities Defense," etc., in which Mr. Gorton says that on landing at Boston (within a short time after Williams had been banished) he understood "that they had formerly banished one Master Roger Williams, a man of good report both for life and doctrine (even amongst themselves), for dissenting from them in some points about their church government, and that in the extremity of winter, forcing him to betake himself into the vast wilderness, to sit down amongst the Indians in place, by their own confessions, out of all their jurisdictions."

Samuel Gorton's testimony.

Banished in midwinter.

But the blow that was intended to crush out forever the influence of his "very dangerous" opinions, and still forever the voice that pleaded for soul-liberty and individual freedom of action, fell powerless, and the banished statesman went forth from their midst in that long-to-be-remembered winter and founded a new State in which his liberal ideas might have a practical application.

Founding of Rhode Island.

"Roger Williams," says Professor Gervinus, in his recent "Introduction to the History of the Nineteenth Century,"[2] "founded, in 1636, a small new society

[1] Volume i, page 162.

[2] Translated from the German. H. G. Bohn, London, 1853, page 65.

Influence of Williams's ideas.

in Rhode Island, upon principles of entire liberty of conscience and the uncontrolled power of the majority in secular concerns. . . . The theories of freedom in church and state taught in the schools of philosophy in Europe, were here brought into practice in the government of a small community. It was prophesied that the democratic attempts to obtain universal suffrage, a general elective franchise, annual parliaments, entire religious freedom, and the Miltonian right of schism, would be of short duration. But these institutions have not only maintained themselves here, but have spread over the whole Union. They have superseded the aristocratic commencements of Carolina and New York, the high-church party in Virginia, the theocracy in Massachusetts, and the monarchy throughout America; they have given laws to one quarter of the globe; and, dreaded for their moral influence, they stand in the background of every democratic struggle in Europe."

Intensity of Williams's feelings.

"Roger Williams's whole being," says Mr. Scott, in his admirable work on "The Development of Constitutional Liberty in the English Colonies of America," "was possessed by the one great principle that the soul should be free, and he was wont to express his heart's aspiration by the term 'soul-liberty.' He boldly threw down the gauntlet to the world, by announcing that soul-liberty was of God, that conscience was by nature free, and that it was the duty of human society to preserve intact that freedom, whereof the least violation was invariably but the first step to soul-bondage. The conscience, the soul of man, being free, no limits bounded that freedom but those set by the Creator. Of a consequence, any limitation imposed on the conscience of one man by another, was an interference between the Creator and the created; it was intolerance, a thing altogether abhorred by God and unjust to man. Religion being

Man cannot buy the soul.

a relation that existed solely between the Creator and the created, God was the only judge of the latter. No religious organization, then, had a shadow of right to dictate what one should think or what one should do in matters religious. As a necessary deduction from this conclusion, no such right existing, there were no need of agents to enforce the observance of faith, nor any right to use them. Consequently, the use of the civil jurisdiction by the ecclesiastical, and the subordination of the former to the latter, had no justification, and was, in fact, a monstrous perversion of truth, which called for immediate reformation."

Church dictation illegitimate.

Thus at one blow, Williams would have cloven the church and state asunder, and sponged from the statute-roll the very mention of conformity or nonconformity. Heresy, with him, had no existence in civil law, and, carrying his doctrine to its conclusion, he fearlessly asserted that compulsory worship of God was an abomination; that, where the spirit was not a willing one, worship compelled was an offense to the Deity; that if one would not worship, he should not be made to do so; and that no man should be compelled to support any religion whatever, least of all one in which he had no faith.[1]

Would separate church and state forever

No compulsory religion.

This doctrine overturned the intolerance whereby the civil power is made the agent of the ecclesiastical in the prescription of faith and the extirpation of heresy, and left error at the mercy of the only power that can combat it — truth. It was the sentence of divorce between church and state, and

Error can be overcome by truth. 176.

[1] Bancroft, 1, chap. ix: "No one should be bound to worship, or to maintain a worship against his consent." "Queries of highest consideration." "We query where you now find one footstep, print, or pattern, in this doctrine of the Son of God, for a national church." Again: "A tenet that fights against the common principles of all civility and the very civil being and combinations of men . . . by commixing . . . a spiritual and civil state together."

Separation of church and state.

it ordained that neither should have anything to do with the other, further than extending the protection under which the latter is bound to shelter every element of society; yet this protection was to be given, not so much to the institution, as to the worshiper, in whom lay the natural right to freedom of conscience, and, consequently, the inherent right to freedom of worship. No man has ever had a clearer view of the true relations existing between the civil and ecclesiastical powers. The civil magistrate, he says, may not intermeddle even to stop a church from apostasy and heresy; . . . his power extends only to the bodies and goods and outward estate of men.[1]

Williams's clear views.

But if the power to impose a style of worship on the individual was denied, nothing could be more positive, nor more catholic, than the emphasis with which he asserted the duty of society to protect the consciences of its members, be who and what they may. Jew or Gentile, Christian, Turk, or Pagan, all were, as the children of God, alike to this apostle of liberty,[2] who would have men learn that one poor lesson of setting absolutely the consciences of all men free,[3] and who would have lifted his fellows to that sublime height, where charity forbids persecution, and where common-sense disdains it as a confession by error of the truth it cannot overcome.[4] . . .

[1] Quoted from a rare tract in Bancroft, volume i, chapter 19.

[2] "It is the will and command of God, that . . . a permission of the most paganish, Turkish, or antichristian consciences and worships be granted to all men, in all nations and countries; and they are only to be fought against with that sword which is, in soul-matters, able to conquer, to wit, the sword of God's Spirit, the word of God." Quoted in Tyler, 1, 254.

[3] "The Bloudy Tenet yet more Bloudy, by Mr. Cotton's Endeavor," etc.

[4] "For me, I must profess, while heaven and earth last, that no one tenet that either London, England, or the world doth harbor, is so heretical, blasphemous, seditious, and dangerous to the corporal, to the

Genius of Williams.

Roger Williams was the man for the times and for the place. A genius, with an intellect as clear as it was fervid; with convictions so intense as to make him dare all to enforce them; with those convictions broadened by great knowledge and experience, tempered by never-failing benevolence, and adapted, as the growth of surrounding circumstances, to the needs of the community; with a courage that laughed at wounds, a resolution that never faltered, an enthusiasm which never failed, a good-nature that softened the hearts of savages, and a sincerity which retained for him the respect of such men, with untiring energy and a robust constitution, he was, of all men, the man best fitted for breaking down a despotism, establishing a principle, or founding a state. He would have been great anywhere. He would have made a name for himself equally in London as in Providence, but such a fame as he deserves, is due only to one who, like him, has not only planted a State, but who has forever stamped the millions that populate the other commonwealths of his race, with an impress all his own. He was impulsive, rugged, earnest, and thorough. Had any other sort of man than the one he was, ventured to do what he did, it is hardly probable that the work of his lifetime had ever been accomplished. The iron despotism which chilled Massachusetts might be making itself felt today; the colony, as it increased in numbers, would have gone on from bad to worse, and, instead of a commonwealth whose name is synonymous with all that is good, intelligent, charitable, and wise, we might

Extent of his influence

spiritual, to the present, to the eternal good of men, as the bloudy tenet . . . of persecution for cause of conscience." Ibid. "A monstrous paradox, that God's children should persecute God's children." "Narragansett Club Publications," volume i, page 319. "Persecutors of men's bodies, seldom or never do these men's souls good." Ibid, 327, 328.

What might have been.

be contemplating a community, the very name of which creeps over us at the recollection of Rochelle, Drogheda, Geneva, the Cevennes, and Piedmont. Worse than this: Had America, instead of being inspired by this noble impulse, been indoctrinated with the absolutism, almost Venetian, then existing, she might never have been blessed by the light which now illuminates her path; and freedom of conscience and the liberty of the citizen, the two kindred principles which have made us what we are, might have shaken our dust from off their feet, or passed us by as unworthy of their presence.

What has made America.

Hardly had the liberty-loving Anglo-Saxons stepped their feet on the American shores, and made a home in the wilds of New England, before the irrepressible spirit of liberty which has ever been a characteristic of these peoples, was destined to raise its voice in opposition to the church-state Sunday laws which have descended to us from the dark ages. The Pilgrim Fathers landed in 1620; and before a score of years had passed, the rightfulness of Sunday laws was one of the leading questions of debate in America.

Beginnings of American freedom.

Roger Williams, who has justly been styled "the first American," was the champion against Sunday laws, and the Puritan clergy and government were their defenders. "Roger Williams," says Bancroft, "was the first person in modern Christendom to assert in its plenitude the doctrine of the liberty of conscience, the equality of opinions before the law."

The first American.

"A few weeks after his arrival" (February 5, 1631), says his biographer, "Mr. Williams was invited by the church at Salem to become assistant to their pastor, the Reverend Mr. Skelton; but the magistrates of the colony had heard of his opinions, and immediately interposed their remonstrances with the people of Salem to prevent his settlement. One reason of this interference on the part of the authorities, as

alleged in the letter which they addressed to the church at Salem, was that he had declared his opinion that '*the magistrate might not punish a breach of the Sabbath,* nor any other offense that was a breach of the first table.'"

The first opposition to Sunday laws.

This charge, it will be seen, relates to his declaration of the great doctrine, to the vindication and elucidation of which he was to devote his life. "His doctrine," continues his biographer, "was in direct conflict with both the opinions and the practices of the colony of Massachusetts, whose counselors and elders considered themselves the appointed guardians of the orthodoxy of the people; and in that age they could conceive of no other mode of executing their trust than by inflicting civil penalties upon every one who ventured to dissent even in the most unimportant particulars from the prevailing faith. The opinion of Roger Williams, which was then urged in proof of his unsuitableness to become a minister of the gospel, has long since become the common sentiment of the American people." William Gammell, in "Spark's Library of American Biograph."

The work of his life.

Oldentime conceptions.

It was fortunate for the anti-Sunday-law cause — the cause of liberty — that it had such a man as Roger Williams to lead out in the agitation for religious freedom. Bancroft pays him the following high tribute:

Early anti-Sunday-law cause.

"At a time when Germany was desolated by the implacable wars of religion; when even Holland could not pacify vengeful sects; when France was still to go through the fearful struggle with bigotry; when England was gasping under the despotism of intolerance; almost half a century before William Penn became an American proprietary; and while Descartes was constructing modern philosophy on the method of free reflection — Roger Williams asserted the great doctrine of intellectual liberty, and made it the corner-stone of a political constitution. It became his glory to found a state upon that principle, and to stamp himself upon its rising institutions, in character so deep that the impress has remained to the present day, and can never be effaced without the total destruction of the work."[1]

Bancroft's tribute to Roger Williams.

Advanced ideas of Williams.

[1] Bancroft, volume i, pages 254, 255.

MARYLAND OR RHODE ISLAND, WHICH?

A MOOTED QUESTION CONSIDERED.

To Virginia unquestionably — thanks to the influence and untiring efforts of Jefferson, Madison, the Baptists, Quakers, and Presbyterians — belongs the honor of first disestablishing religion in America. But to which colony, Maryland or Rhode Island, belongs the honor of first establishing a commonwealth upon the principle of entire separation of church and state, is a mooted question.

A mooted question.

Referring to Maryland's being founded by Roman Catholics, Bishop Spalding, of Peoria, in the "North American Review" for September, 1894, says: "They founded one of the thirteen colonies, and were the first in the New World — the first, indeed, in all the world — to make freedom of conscience an organic part of the Constitution of a State."

The claim for Maryland.

On the other hand, David Benedict, in his "History of the Baptists," page 446, referring to Rhode Island, says: "Roger Williams justly claims the honor of having been the first legislator in the world that fully and effectually provided for and established a free, full, and absolute liberty of conscience." And Sidney S. Rider, in his work "Soul Liberty Rhode Island's Gift to the Nation," page 85, styles Rhode Island "the first commonwealth in the New World, the first in the world, to make soul liberty the basis of a Constitution for a State."

The claim for Rhode Island.

Conflicting and opposed as are these claims, Montgomery, in his "Beginner's American History," edition 1902, appears to sanction both. On pages 58 and 59 he says: "Maryland was different from the other English colonies in America, because there, and there only, every Christian, whether Catholic or Protestant, had the right to worship God in his own way. In that humble little village of St. Mary's, made up

Both claims seemingly endorsed.

of thirty or forty log huts and wigwams in the woods, religious liberty had its only home in the wide world;" while on page 65 he says: "Providence was the first settlement in America which offered a home to all men without asking them anything whatever about their religion."

So eminent an authority as Bancroft, in the earlier editions of his "History of the United States," stated that the Maryland proprietary "adopted religious freedom as the basis of the state," and said that here "religious liberty obtained a home, its only home in the wide world," and "conscience was without restraint."[1] In later editions, however, while not denying that a wide and generous toleration characterized the early Maryland administration, these statements are omitted, and the declaration made that Roger Williams "was the first person in modern Christendom to establish civil government on the doctrine of the liberty of conscience."[2]

Bancroft's earlier and later statements.

What are the facts, and how are we to understand these conflicting claims?

That there was large freedom in religion in the early history of the Maryland colony, and an absence of religious persecution from its founding in 1634, seems evident. That the proprietary, intent on advancing the interests of his colony, invited the Puritans of Massachusetts to Maryland, offering them lands and privileges, and "free liberty of religion;" and that certain Puritans, expelled from Virginia for nonconformity to the established religion of that colony, found refuge in Maryland in 1649, are facts plainly stated by Bancroft.[3] "It is true," says Montgomery, "that Lord Baltimore, holding his charter, as he did

A liberal toleration in Maryland.

1 Edition 1837, volume i, pages 244, 247, 254.

2 Edition 1888, the author's last revision, page 255.

3 Bancroft's "History of the United States," volume i, pages 165, 169, edition 1888.

from the Protestant sovereign of a Protestant nation, could not have safely denied liberty of worship to Protestants; but it is also true that he evidently had no desire in his heart to deny such liberty. The fact that he invited Puritans into the colony and protected them from persecution, shows the man's true spirit." [1]

Conditions favoring toleration.

Until 1625, or within nine years of the founding of the colony of Maryland, Lord Baltimore was himself a Protestant.[2] He was "a man of such moderation," says Bancroft, "that all parties were taken with him." His chief object in founding the colony, it appears, was commercial and mercenary, rather than religious. From the first, there was a "mixed population," Bancroft informs us, and while "the administration was in the hands of a Catholic," "the very great majority of the people were Protestants." [3] Under such circumstances it is not strange that toleration should exist.

Legal declarations implying an established or preferred religion.

It is not true, however, that the colony was founded upon the principle of total separation of church and state and absolute freedom in matters of religion for all men, as was Rhode Island; or that the early laws of the colony were free from all religious interference and bias. The charter obtained by Lord Baltimore in 1632, provided that "no interpretation be admitted thereof by which God's holy and true Christian religion, or the allegiance due unto us, our heirs, and successors, may suffer any prejudice or diminution." [4] This would at least seem to imply or anticipate a favored, if not an established, religion, and state control or supervision of that religion. And one of the first acts of the Maryland Assembly of 1639, reads: "Holy Church within this province shall have all her

[1] "Leading Facts of American History," by James Montgomery, page 105, edition 1902.

[2] "Soul Liberty Rhode Island's Gift to the Nation," by Sidney S. Rider, pages 11, 12. [3] Bancroft, volume i, page 166.

[4] Hazard's "Historical Collection of State Papers" (1792), volume i, page 327.

rights, liberties, and immunities safe, whole, and inviolable, in all things." [1]

In 1649 an act containing the following provision was passed by the Maryland Assembly:

Freedom of conscience for Christians.

"And whereas the enforcing of the conscience in matters of religion hath frequently fallen out to be of dangerous consequence in those commonwealths where it hath been practiced, and for the more quiet and peaceable government of this province, and the better to preserve mutual love and amity among the inhabitants, no person within this province, professing to believe in Jesus Christ, shall be in anywise troubled, molested, or discountenanced, for his or her religion or in the free exercise thereof." [2]

While undoubtedly designed to protect freedom of conscience, Bancroft observes that this "clause for liberty in Maryland, *which extended only to Christians,* was introduced by the proviso that 'whatsoever person shall blaspheme God, or shall deny or reproach the Holy Trinity, or any of the three persons thereof, shall be punished with *death.*'" [3] Under the enforcement of such a law, Unitarians, Jews, and unbelievers generally, as well as the profane, would certainly fare hard.

An intolerant proviso.

The same law further provided that —

"Whatsoever person or persons shall from henceforth use or utter any reproachful words, or speeches, concerning the blessed Virgin Mary, the mother of our Saviour, or the holy apostles, or evangelists, or any of them, shall in such case for the first offense forfeit to the said Lord Proprietary and his heirs, the sum of five pounds sterling." [4]

Mariolatry protected by law.

This sounds very much like a law of a religious establishment, and that, too, of the Roman Catholic Church.

Such provisions show beyond question that the government of Maryland did assume control over religious matters, and that however much toleration there was

Church and state not separate in Maryland.

[1] "Proceedings and Acts of the General Assembly of Maryland, 1637-1664," page 40.

[2] Bancroft, volume i, page 168. [3] *Ibid.*

[4] "Proceedings and Acts of the General Assembly of Maryland, 1637-1664," page 244.

in the colony, freedom of conscience was not an organic part of its Constitution. But not so Rhode Island. There, says Montgomery, "from the beginning entire freedom of conscience was given to every settler. Maryland had granted such liberty to all Christians, but the colony of Providence did not limit it,— not Protestants and Catholics only, but Jews — yes, unbelievers even were protected, and thus men of all religions and of no religion were safe from molestation so long as they behaved themselves. In all other colonies in America [Maryland included], as in every country of Europe, the government favored some particular worship, and in some degree compelled people to maintain it and conform to it. But here there was nothing of the kind. Roger Williams first laid down and put in actual practice what we may call the American principle — that is, that government has nothing whatever to do with the control of religious belief."[1]

Entire freedom in Rhode Island.

Roger Williams first laid down American principle.

In 1631, three years before the ships of Lord Baltimore left the shores of England for Maryland, Roger Williams, at Salem, Massachusetts, set forth the doctrine "that man is accountable to his Maker alone for his religious opinions and practices, and is entitled to unrestrained liberty to maintain and enjoy them."[2] This is the doctrine for which he was banished from Massachusetts, and which he took with him to Rhode Island, in 1636, and made the Magna Charta of that colony. To state the matter plainly, religious liberty with Roger Williams was a *principle;* with Lord Baltimore, a matter of *policy.*

Rhode Island's Magna Charta.

In two petitions for a new charter, presented to Charles II in 1662, Dr. John Clarke stated that the people of Rhode Island had it much in their hearts "to hold forth a lively experiment that a flourishing civil state may stand, yea, and best be maintained, with a

A "lively experiment."

1 "Leading Facts of American History," by Montgomery, page 110.

2 "Memoir of Roger Williams," by James D. Knowles, page 48.

full liberty in religious concernments."[1] It was Rhode Island, therefore, and not Maryland, that was making this "lively experiment."

The Rhode Island charter granted by King Charles the next year, in response to these petitions, said:

"Our royal will and pleasure is that no persons within the said colony, at any time hereafter, shall be anywise molested, punished, disquieted, or called in question, for any differences in opinion in matters of religion, . . . any law, statute, . . . usage or custom of this realm to the contrary hereof, in any wise, notwithstanding."[2]

Charles II enjoins religious freedom in Rhode Island.

Rhode Island had gained what the mother country did not possess herself — religious liberty. No such petitions nor charter relating to any other American colony can be found.

Rhode Island stands unique.

And in "America Dissected" (Dublin, 1753), page 31, Rev. James Mac Sparran, complaining of Rhode Island says:

No Sunday enforcement.

"In all the other colonies the law lays an obligation to go to some sort of worship on Sunday, but here liberty of conscience is carried to an irreligious extreme."

This again singles out Rhode Island as the one and only colony in which there was perfect freedom in matters of religion.

That there was a large measure of freedom in Maryland need not be denied; but that there was absolute separation of church and state there, or that this is a principle held or advocated generally by the Roman Catholic Church, is not true. Sixty-two years before the founding of the Maryland colony, in 1572, occurred the massacre of St. Bartholomew, in which the attempt was made to extirpate all Protestants in France. Fifty-one years after the settlement of the colony, in October, 1685, the Edict of Nantes was revoked, and every Protestant who could leave Europe fled to

Not a Catholic principle.

1 "State of Rhode Island and Providence Plantations," by Edward Field, volume i, page 101.

2 *Ibid.*, page 104.

America. And at the very time when the colony was being planted, thousands of men and women in Spain and elsewhere in Europe were being sent to prison, banished, or burned at the stake solely for what the Catholic Church pronounced "heresy" in matters of religion. In 1616, Galileo, the founder of modern physics, was warned by the Inquisition not to "hold, teach, or defend" the Copernican system. Continuing to do so, he was summoned to Rome in 1632, only two years before the founding of Maryland, and upon his knees forced to abjure the doctrine.

The strong claims made during recent years by Catholic writers concerning Maryland would seem to imply an endorsement on the part of the Roman Catholic Church of the principle of separation of church and state and religious freedom; but the utterances of the latest prelates of the Roman See, like those of more ancient times, convey no such impression. Thus, in his letter addressed to the bishops of France, dated February 11, 1906, Pope Pius X, the latest pope, says:

An implied position disproved.

> "That it is necessary to separate church and state is a thesis absolutely false,—a most pernicious error. Based in fact upon the principle that the state ought not to recognize any religious faith, it is, to begin with, deeply insulting to God; for the Creator of man is also the founder of human societies, and he maintains them as he does us. We owe him therefore, not only private worship, but also a public and social worship is his praise." [1]

Pius X on church and state.

In his encyclical on "Human Liberty" *(Libertas)*, of June 20, 1888, Pope Leo XIII said:

> "Since the state ought to have a religion, it ought to profess that which is alone true and which in Catholic countries is especially recognizable. . . . It follows from what precedes that it is nowise permitted to demand, defend, or grant liberty of thought, or of the press, of teaching, and of religion, as well as many other rights which man may be supposed to have by nature." [2]

Leo XIII on religious liberty.

[1] "Readings in Modern European History," by Professors J. H. Robinson and C. A. Beard, of Columbia University, N. Y., page 229.

[2] "Life and Labors of Pope Leo XIII," by Charles de T'Serclaes, edited by Maurice Francis Egan, pages 184, 187.

And in his "Encyclical to France," of February 16, 1892, the same pope speaks of "the false principle of separation" of church and state.[1]

In the "Syllabus" of Pope Pius IX, of December 8, 1864, the following, among the eighty propositions enumerated, were condemned as "errors of our time:"

Syllabus of Pius IX.

"15. Every man is free to embrace and profess the religion he believes true, guided by the light of reason.

"24. The church has not the power of availing herself of force or any direct or indirect temporal power.

"55. The church ought to be separated from the state, and the state from the church.

"57. Civil laws may and must be independent of divine and ecclesiastical authority.

"77. In the present day it is no longer expedient that the Catholic religion shall be held as the only religion of the state, or to the exclusion of all other modes of worship.

"78. Whence it has been wisely provided by law, in some countries called Catholic, that persons coming to reside therein shall enjoy the public exercise of their own worship."[2]

Statement from Cardinal Gibbons.

These propositions are condemned as errors. Their opposites, therefore, must be the position and teaching of the church represented. And this is true even in the United States. In his work "Faith of Our Fathers," page 269, Cardinal Gibbons sets forth the following approvingly: "Religious liberty may be tolerated by a ruler when it would do more harm to the state or to the community to repress it;" and he adds, "This is the true Catholic teaching on this point, according to Bacanus and all Catholic theologians." Think of an American talking about "tolerating" religious liberty!

In his book "Maryland the Land of Sanctuary," Rev. William T. Russell, while maintaining that in Maryland "religious liberty gained its first foothold among the nations of the earth" (page 1), and that

1 "Life and Labors of Pope Leo XIII," by Charles de T'Serclaes, edited by Maurice Francis Egan, page 353.

2 "The Papacy and the Civil Power," by R. W. Thompson, pages 729-735.

"the glory of Maryland is derived from its generous custom of religious toleration" (pages 310, 311), nevertheless, in harmony with Cardinal Gibbons, teaches that "a Catholic ruler is justified in granting a limited religious liberty, . . . when to refuse religious liberty would be more injurious than to grant it" (page 7); and says that "the closer the union between the civil and religious authority, as long as each aids the other, and neither encroaches upon the domain of the other, the better will it be for both" (page 6). Think of an American citizen and author suggesting that for a ruler to grant religious liberty would be "injurious"!

Religious liberty injurious!

In a sermon on "Catholic Tolerance in America," delivered in St. Patrick's Church, Washington, D. C., May 4, 1910, Mr. Russell further said:

> "The state cannot afford to permit religious liberty. We hear a great deal about religious tolerance, but we are only tolerant in so far as we are not interested. A person may be tolerant toward a religion if he is not religious. . . . Intolerance means fervor and zeal. The best the state can do is to establish a limited religious liberty; but beyond a certain degree of tolerance the state cannot afford to admit the doctrine."[1]

Not to be permitted.

An editorial in the "Western Watchman" of August 25, 1910, a leading Catholic paper of the country, published at St. Louis, styles the union of church and state in any country "the ideal relation." It further says:

Union of church and state the "ideal relation."

> "We have no union of church and state in this country, for the simple reason that our state is not Christian; and the church cannot be yoked to an unchristian commonwealth."

There is little consistency, therefore, in the claim put forth by Catholic writers that to the Catholic Church is due the honor of first establishing in the world a state founded upon the principles of religious liberty, while the testimony, both ancient and modern,

An inconsistent claim.

[1] Washington "Post," May 5, 1910.

is so abundant that this is not and never has been a Catholic doctrine; and while these same writers themselves stand for a union of church and state and the right to be intolerant. If religious freedom was a good thing in Maryland, why would it not be a good thing in every land? If "the glory of Maryland is derived from its generous custom of religious toleration," why would not the exercise of this same kind of toleration bring glory to every other country in the world? And if placing all denominations upon anything like an equality before the law was a good thing in Maryland, and the Catholic Church really approves of this there, why would it not be a good thing in every other civil government in the world, and why does not the Catholic Church approve of it at the present time in France and Spain, for instance?

If religious liberty good, why not make it universal?

Nor are Protestants who stand for religious legislation and state interference in matters of religion less inconsistent. Largely through their influence, and contrary to one of the fundamental principles of Protestantism, there have been placed upon the statute books of nearly every State in the Union, laws for the compulsory observance of Sunday, Rhode Island included. Says Rev. W. F. Crafts, in the "Christian Statesman" of July 3, 1890, "During nearly all our American history the churches have influenced the States to make and improve Sabbath laws." And they are now trying to "influence" the United States government itself to make this same kind of laws. The inconsistency of their efforts in this direction was noted by Rev. Thomas F. Cashman, a Catholic priest of Chicago, a few years ago. He said:

Protestants equally inconsistent.

"The position of coercion taken by so many of the Protestant clergy — the position that, although they are admittedly in a hopeless minority of all the people of these United States, they would compel all the rest of us to accept of their Sunday dogmas by recourse to law and other methods — is a grievous departure from their old battle-cry of civil and religious liberty." [1]

A grievous departure.

[1] Chicago "Evening Journal," April 8, 1893.

Rhode Island the colony.

To the extent that Maryland declared for or practiced religious freedom, let all due honor and credit be given; but to Rhode Island, rather than to Maryland or to any other of the thirteen original colonies, must we look for a State founded, from its very beginning, upon the principle of absolute liberty of conscience and separation of church and state. Speaking of Rhode Island, Montgomery says, "Not a single blot of religious persecution rests on the fair pages of the history of the colony."[1] This cannot be said of the State of Maryland. Within recent years, under its Sunday laws, have occurred numerous prosecutions of conscientious observers of the seventh day, with fines and imprisonments following. See accounts of some of these on pages 721-726.

Persecutions in Maryland.

While the statute books of Rhode Island, even from an early date (1679, four years before the death of Roger Williams), have been blemished with laws against Sunday labor and "breakers of the Sabbath."[2] and an alleged law of 1663-64, excluding Roman Catholics from office,— though this last has been declared an evident "interpolation" by those who have carefully investigated the matter, as it appears first in a code called the "Revision of 1745," and no record of its passage can be found when it was said to have been enacted,[3]— the fact still remains that the colony was established upon right principles, and that, as yet, few, if any, prosecutions of men for conscience' sake have disgraced the State. To Rhode Island, therefore, rather than to Maryland, must the honor of first founding a commonwealth upon right principles be accorded.

The verdict from the evidence.

[1] "Leading Facts of American History," page 111.

[2] See pages 57, 629.

[3] See "History of the Baptists," by Thomas Armitage, D. D LL. D., pages 650-652.

PART II.

Federation Period.

"The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle."— *Madison.*

PLAN OF ACCOMMODATION WITH GREAT BRITAIN.

RESOLUTION ADOPTED BY THE NEW YORK PROVINCIAL CONGRESS, JUNE 24, 1775.

As the free enjoyment of the rights of conscience is of all others the most valuable branch of human liberty, and the indulgence and establishment of popery all along the interior confines of the old Protestant colonies tends not only to obstruct their growth, but to weaken their security, [*Resolved,*] that neither the Parliament of Great Britain, *nor any other earthly legislature or tribunal, ought or can of right interfere or interpose in anywise howsoever in the religious and ecclesiastical concerns of the colonies.*[1]

Free enjoyment of rights of conscience the most valuable branch of human liberty.

No earthly power can of right interfere in religious concerns.

VIRGINIA DECLARATION OF RIGHTS.[2]

June 12, 1776.

ADOPTED JUNE 12, 1776.

A declaration of rights, made by the representatives of the good people of Virginia, assembled in

Title.

1 Adopted in the New York Provincial Congress, "Die Saturnii, 9 ho. A. M., June 24, 1775." "American Archives," Fourth Series, volume ii, pages 1317, 1318. Published under authority of an act of Congress, passed on the second of March, 1833.

These papers are but the natural result of the political ideas of the time. Similar resolutions were passed in legislatures, conventions, assemblies, and in the various religious and secular gatherings of the times from New England to Georgia. The very air teemed with protestations against state usurpation, and as a result bigotry received a setback from which it has not even yet recovered. Sunday laws passed into innocuous desuetude; and from that desuetude it is the burden of the Sundayists of the present day to restore them. But shall they be allowed to succeed? For them to succeed means the close of the day of liberty for the American people.

What a revival of Sunday laws will mean.

2 "American Archives," Fourth Series, volume vi, pages 1561, 1562. The Virginia Declaration of Rights was drafted in accordance with an order of the celebrated convention of Virginia of 1776, it being "*Resolved unanimously*, That a committee be appointed to prepare

Rights the basis and foundation of government.

full and free convention; which rights do pertain to them and their posterity, *as the basis and foundation of government.*

All men equally independent.

SECTION 1. That all men are by nature *equally* free and independent,[1] and have certain inherent

a declaration of rights, and such a plan of government as will be most likely to maintain peace and order in this colony, and secure substantial and equal liberty to the people." *Ibid.*, page 1524. Similar provisions to those of the Virginia Declaration of Rights have subsequently been made in the Constitutions of nearly every State of the Union.

Every man's innate sense asserts political equality.

[1] Although the powers of earth are slow to recognize the fact, the sense of every man — yea, the sense of even the savage — asserts the self-evident truth that all men are created equal, — that no one has the right to usurp authority over the opinions of another. Treating of the evolution of the recognition of this principle, Herbert Spencer says:

Liberty of each limited only by the like liberty of all.

"This first and all-essential law, declaratory of the liberty of each limited only by the like liberty of all, is that fundamental truth of which the moral sense is to give an intuition, and which the intellect is to develop into a scientific morality.

Evidence of the inference.

"Of the correctness of this inference there are various proofs, upon an examination of which we must now enter. And first on the list stands the fact, that, out of some source or other in men's minds, there keep continually coming utterances more or less completely expressive of this truth. Quite independently of any such analytical examinations as that just concluded, men perpetually exhibit a tendency to assert the equality of human rights. In all ages, but more especially in later ones, has this tendency been visible. In our own history we may detect signs of its presence as early as the time of Edward I, in whose writs of summons it was said to be 'a most equitable rule, that what concerns all should be approved of by all.' How our institutions have been influenced by it may be seen in the judicial principle that 'all men are equal before the law.' The doctrine that 'all men are naturally equal' (of course only in so far as their claims are concerned), has not only been asserted by philanthropists like Granville Sharpe, but as Sir Robert Filmer, a once renowned champion of absolute monarchy, tells us, 'Heyward, Blackwood, Barclay, and others that have bravely vindicated the rights of kings, . . . with one consent admitted the natural liberty and equality of mankind.' Again, we find the Declaration of American Independence affirming that 'all men have equal rights to life, liberty, and the pursuit of happiness;' and the similar assertion that 'every man has an equal right with every other man to a voice in the making of the laws which all are required to obey,' was the maxim of the Complete Suffrage movement. In his essay on 'Civil Government,' Locke, too, expresses the opinion that there is 'nothing more evident than

Perpetual tendency to assert the equality of human rights.

Equality before the law.
All men naturally equal.

Declaration of American Independence.

Every man has an equal right with every other man.

rights, of which, when they enter into a state of society, *they cannot, by any compact, deprive or divest their posterity;* namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Inherent rights cannot be alienated by any compact.

SECTION 2. That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

All power vested in the people.

Magistrates, as servants, always amenable to the people.

. . . . . .

SECTION 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.[1]

Religion can be directed only by reason, not by force.

All men are equally entitled to the free exercise of religion.

that creatures of the same species and rank, promiscuously born to the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection.' And those who wish for more authorities who have expressed the same conviction, may add the names of Judge Blackstone and 'the judicious Hooker.'

Locke says nothing is more evident.

"The sayings and doings of daily life continually imply some intuitive belief of this kind. We take for granted its universality, when we appeal to men's sense of justice. In moments of irritation it shows itself in such expressions as 'How would you like it?' 'What is that to you?' 'I've as good a right as you,' etc. Our praises of liberty are pervaded by it; and it gives bitterness to the invectives with which we assail the oppressors of mankind. Nay, indeed, so spontaneous is this faith in the equality of human rights, that our very language embodies it. *Equity* and *equal* are from the same root; and equity literally means *equalness.*" "Social Statics," chapter 5, section 2.

Evidences exhibited in daily life.

Expressions indicating natural equality.

Our language itself an evidence of political equality.

[1] "On the twelfth of June, the convention adopted, without a dissenting voice, its celebrated 'Declaration of Rights,' a compact, luminous, and powerful statement, in sixteen articles, of those great fundamental rights that were henceforth to be 'the basis and foundation of government' in Virginia, and were to stamp their character

Declaration of Rights adopted unanimously.

Its influence seen in all subsequent Constitutions.

upon that Constitution on which the committee were even then engaged. Perhaps no political document of that time is more worthy of study in connection with the genesis not only of our State Constitutions, but of that of the nation likewise. It is now known that, in the original draft, the first fourteen articles were written by George Mason, and the fifteenth and sixteenth by Patrick Henry. The fifteenth article was in these words:

Liberty preserved only by adhering to fundamental principles.

"'That no free government, or the blessings of liberty can be preserved to any people but by a firm adherence to justice, moderation, temperance, frugality, and virtue, and by frequent recurrence to fundamental principles.'

The first assertion of religious liberty in Virginia.

"The sixteenth article is an assertion of the doctrine of religious liberty, — the first time that it was ever asserted by authority in Virginia. The original draft, in which Henry followed very closely the language used on that subject by the Independents in the Assembly of Westminster, stood as follows:

Original article as written by Patrick Henry.

"'That religion, or the duty we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force or violence; and, therefore, that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color of religion, any man disturb the peace, the happiness, or the safety of society; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.' Edmund Randolph, manuscript, 'History of Virginia.'" Tyler's "Patrick Henry," pages 183, 184.

Of Madison, who was a member of this convention, history says:

Madison an ardent advocate of religious liberty.

"Religious liberty was a matter that strongly enlisted his feelings. When it was proposed that, under the new Constitution, all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, Madison pointed out that this provision did not go to the root of the matter. The free exercise of religion, according to the dictates of conscience, is something which *every man may demand as a right, not something for which he must ask as a privilege.* To grant to the state the power of tolerating is implicitly to grant to it the power of prohibiting: whereas Madison would deny to it *any jurisdiction whatever* in the matter of religion. The clause in the Bill of Rights, as finally adopted, at his suggestion, accordingly declares that 'all men are equally entitled to the free exercise of religion, according to the dictates of conscience.' The incident not only illustrates Madison's liberality of spirit, but also his precision and forethought in so drawing up an instrument as to make it mean all that it was intended to mean." Appleton's "Cyclopedia of American Biography," volume iv, page 165.

Religious toleration not religious liberty.

Religious liberty a right, not a privilege.

Government, of right, has no jurisdiction whatever in religious matters.

Madison's character.

The statements in the sixteenth section seemed to be proverbial of the times. The Presbytery of Hanover, in 1776, declared as follows:

DECLARATION OF INDEPENDENCE.

July 4, 1776.

IN CONGRESS, JULY 4, 1776.

THE UNANIMOUS DECLARATION OF THE THIRTEEN UNITED STATES OF AMERICA.[1]

. . . . . .

We hold these truths to be self-evident: that all men are created equal; that they are endowed, by their Creator, with certain unalienable rights; that among these are life, liberty,[2] and the pursuit of

American principles self-evident.

All men politically equal.

"The only proper objects of civil government are the happiness and protection of men in the present state of existence; the security of the life, liberty, and property of the citizen; and to restrain and encourage the virtuous by wholesome laws equally extended to every individual: but the duty that we owe to our Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the universal Judge. To judge for ourselves, and to engage in the exercise of religion agreeably to the dictates of our own conscience, is an inalienable right, which, upon the principles on which the gospel was first propagated, and the reformation from popery carried on, can never be transferred to another."

Man's temporal welfare the only proper object of government.

Manner of discharging religion cognizable only at the bar of God.

The free exercise of religion an inalienable right.

It was also asserted that if the Assembly had a right to determine the preference between Christianity and the other systems of religion that prevail in the world, they might also at a convenient time give a preference to some favored sect among Christians.

Government has no right to give preference to Christianity.

Washington entertained the same views:

"Every man who conducts himself as a good citizen, is accountable alone to God for his religious faith, and should be protected in worshiping God according to the dictates of his own conscience."

Washington's views.

[1] "United States Statutes at Large," volume i, page 1.

[2] On the rights of life and personal liberty, Spencer says:

"These are such self-evident corollaries from our first principle [*i. e.*, that "Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man"] as scarcely to need a separate statement. If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, it is manifest that he has a claim to his life: for without it he can do nothing that he has willed; and to his personal liberty: for the withdrawal of it partially, if not wholly, restrains him from the fulfilment of his will. It is just as clear, too, that each man is forbidden to deprive

Corollaries self-evident from first principle.

Governments instituted to secure our rights.

happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.[1]

. . . . . .

his fellow of life or liberty, inasmuch as he cannot do this without breaking the law, which, in asserting his freedom, declares that he shall not infringe 'the equal freedom of any other.' For he who is killed or enslaved is obviously no longer equally free with his killer or enslaver." "Social Statics," chapter 8, section 1.

Jefferson the drafter of the Declaration of Independence.

The leading statesman of the times.

Political views.

A firm advocate of religious liberty.

Madison the best exponent of Jefferson's principles in the Constitutional Convention.

Jefferson's views on natural rights.

[1] Thomas Jefferson was chairman of the committee appointed to draft the Declaration of Independence, and himself wrote the original, which met with very little alteration in the committee. Jefferson was both a scholar and a philosopher, and of all the great statesmen that the times produced, he undoubtedly took the lead. His views on government were those laid down by Locke — the social compact theory — that governments derive their just powers from the consent of the governed, and that no power on earth has a right to interfere with an individual's natural rights. Religious liberty had no firmer, no more consistent, advocate than Mr. Jefferson; and no other statesman of the times had a clearer idea of the foundation principles of our government. The nearest friend of Jefferson in the Constitutional Convention was Madison, who was also the best exponent of the principles held by that great democratic statesman. Jefferson's views on the doctrine of natural rights are found in a letter to Francis W. Gilmer, dated at Monticello, June 7, 1816: "Our legislators are not sufficiently apprised of the rightful limits of their power; that *their true office is to declare and enforce only our natural rights and duties, and to take none of them from us.* No man has a natural right to commit aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of the society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions, and *the idea is quite unfounded, that on entering into society we give up any natural right.*"

On entering into society man gives up no natural right.

Letter to Mr. Randolph.

Best political works.

In reference to the best works on government, in a letter to Mr. Randolph, dated at New York, May 30, 1790, Jefferson said: "In political economy, I think Smith's Wealth of Nations is the best book extant; in the science of government, Montesquieu's Spirit of Laws is generally recommended. It contains, indeed, a great number of political truths; but also an equal number of heresies; so that the reader must be constantly on his guard. . . . Locke's little book on government, is perfect as far as it goes. Descending from theory to practice there is no better book than the Federalist." Works, volume iii, page 145.

A GREAT SPEECH.

BY PATRICK HENRY, IN THE CONTINENTAL CONGRESS, INDEPENDENCE HALL, PHILADELPHIA, JULY 4, 1776.

[The following is the greater portion of the famous speech made by Patrick Henry, the fiery orator of Virginia, July 4, 1776, in Independence Hall, Philadelphia, just before the signing of the Declaration of Independence, which is said to have carried his hearers along the path of conviction until every one was ready not only to sign the Declaration itself but to sacrifice all, that the colonies might be free from the yoke of foreign oppression:] [1]

These words will go forth to the world when our bones are dust. To the slave in bondage they will speak hope; to the mechanic in his workshop, freedom. . . .

The message of the Declaration of Independence.

That parchment will speak to kings in language sad and terrible as the trumpet of the archangel. You have trampled on the rights of mankind long enough. At last, the voice of human woe has pierced the ear of God, and called his judgment down. . . .

[1] During the discussion over the Declaration of Independence some pale-faced man shrinking in the corner was heard to say something about "axes, scaffolds, and a — gibbet." This seems to have been the signal for this eloquent, inspiring, and intrepid speech, and to explain the allusion in it to the "gibbet" and "axes." "Gibbet!" the patriot shouted in a fierce, bold tone that startled men from their seats and rang through the hall, as he rose to his feet. Then, slowly stretching out his white, trembling hand, he continued:

The signal for the speech.

"Gibbet! They may stretch our necks on all the gibbets in the land; they may turn every rock into a scaffold, every tree into a gallows, every home into a grave, and yet the words of that parchment can never die.

Opening words of the speech.

"They may pour blood upon a thousand scaffolds, and yet from every drop that dyes the ax, or drops on the sawdust of the block, a new martyr of freedom will spring into birth!

"The British King may blot out the stars of God from his sky, but he cannot blot out the words written on the parchment there. The works of God may perish; His word, never!"

Then followed the speech as here given. The copy from which this is republished is credited to the *Boston Journal,* but without date.

Such is the message of the Declaration to the kings of the world. And shall we falter now? And shall we start back appalled when our free people press the very threshold of freedom? . . .

Sign! sign! sign!

Sign! if the next moment the gibbet's rope is around your neck. Sign! if the next moment this hall rings with the echo of the falling ax. Sign! by all your hopes in life, or death, as husbands, fathers — as men with our names to the parchment, or be accursed forever!! Sign! not only for yourselves, but for all ages; for that parchment will be the text book of freedom — the Bible of the rights of man forever.

Like the voice of God.

Sign! for the declaration will go forth to American hearts like the voice of God. And its work will not be done until throughout this wide continent not a single inch of ground owns the sway of privilege of power.

It is not given to our poor human intellect to climb the skies, to pierce the councils of the Almighty One. But methinks I stand among the awful clouds which veil the brightness of Jehovah's throne. Methinks I see the recording angel — pale as an angel is pale, weeping as an angel can weep — come trembling up to the throne and speaking his dreadful message.

The angel's message of woe.

Father! The old world is baptized in blood. Father! It is drenched with the blood of millions who have been executed, in slow and grinding oppression. Father, look! With one glance of thine eternal eye, look over Europe, Asia, Africa, and behold everywhere a terrible sight — man trodden down beneath the oppressor's feet, nations lost in blood, murder and superstition walking hand in hand over the graves of their victims, and not a single voice to whisper hope to man.

The Father's response — a new world free from oppression.

He stands there (the angel), his hand trembling with the human guilt. But hark! The voice of Jehovah speaks out from the awful cloud: Let there be light again. Let there be a new world. Tell my people, the poor, downtrodden millions, to go out from

the old world. Tell them to go out from wrong, oppression, and blood. Tell them to go out from the old world to build up my altar in the new.

As God lives, my friends, I believe that to be his voice. Yes, were my soul trembling on the wing of eternity, were this hand freezing to death, were my voice choking with the last struggle, I would still, with the last gasp of that voice, implore you to remember the truth. God has given America to be free. Yes, as I sank down into the gloomy shadows of the grave, with my last gasp I would beg you to sign that parchment. In the name of the One who made you, the Saviour who redeemed you, in the name of the millions whose very breath is now hushed, as, in intense expectation, they look up to you for the awful words, YOU ARE FREE!

God has given America to be free.

MOTTO ON LIBERTY BELL.

Proclaim liberty throughout all the land unto all the inhabitants thereof. Leviticus xxv. 10.[1]

The motto.

[1] One of the most interesting relics of colonial and Revolutionary times is Liberty Bell. It is of particular interest, not only because of the motto inscribed upon it, which itself seemed both providential and prophetic, but because its history is so intimately associated with the signing of the Declaration of Independence, the formation of the Constitution of the United States, and the enunciation and development of those principles which have made this nation great.

History of Liberty Bell.

The bell was ordered made, by a resolution passed by the Pennsylvania Assembly of 1750–51, for the Pennsylvania State House, at Philadelphia, later known as Independence Hall. The order for the casting of the bell was first given to a firm in England. The bell made, however, was not satisfactory, and it was broken up, and, with some added metals, recast by the firm of Pass and Stow, of Philadelphia. This, again, did not prove satisfactory, and the same firm cast it over a second time. This last effort was more successful, and produced the bell which announced to the people on the evening of July 4, 1776, the fact that the motion to adopt the Declaration of Independence had passed the Assembly.

Cast three times.

A point worthy of note is the fact that each time the bell was cast, there were inscribed upon it the words: "Proclaim liberty throughout all the land unto all the inhabitants thereof. Lev. xxv. 10."

Same motto.

The great Jubilee proclamation.

This is the Jubilee proclamation which God ordained should be proclaimed throughout the land of Israel every fifty years, when every servant should be set free, every debt canceled, and every one return to his original possession of land lost or pledged away through misfortune or adverse circumstances. That such a bell, with such a motto, should be the one first to announce American independence seems indeed fitting and significant.

What the signing of the Declaration of Independence meant.

The signing of the Declaration of Independence meant much,— a war lasting through eight long years! a victory for human rights and liberties! and a new nation, established upon "a new order of things"! Many feared the results of such a bold and decided step; others questioned its propriety; and some, like the old bell-ringer in the belfry, kept shaking their heads, and saying, "They'll never do it! they'll never do it!" But they did do it, and the old belfryman's eyes expanded, and he grasped the rope with a firmer hold, when a

Rang for hours.

blue-eyed boy flew up the stairs, shouting, "Ring! ring! they've signed!" For hours the vibrant lips of old LIBERTY BELL pealed forth the birth-notes of American freedom. The message was taken up in other parts, and many bells throughout the land proclaimed the joyful news. When the courageous American patriots had completed signing the immortal document, and the importance of all "hanging together" was mentioned by some one, Benjamin Franklin said, "We must all hang together, or we shall all hang separately."

For nearly sixty years Liberty Bell did service in Independence Hall, excepting a short period during the Revolutionary War, when it was taken down and secreted to prevent the possibility of its being taken as "the spoils of war." But on July 8, 1835, it sounded for the last time. While being slowly tolled during the funeral of Chief

Cracked in 1835.

Justice John Marshall on that day, it cracked, and was silent henceforth forever. And we are not so sure but that this seemingly most

This seemingly prophetic.

unfortunate occurrence was also prophetic. Human slavery was then taking such deep root in this country as to bring on a little later a prolonged and most bloody internecine war for its extirpation; and other elements were also at work, and have since developed to great proportions, to trample upon the dearest rights of all, the rights of conscience, and turn this nation back into the "old order of things," — the evils of religious bigotry and intolerance.

Still in Independence Hall.

Old Liberty Bell is now preserved, and may be seen, in a large glass case standing on the ground floor of Independence Hall. It has several times been placed on exhibit at world's fairs and the like. The Declaration of Independence, so closely associated with Liberty Bell, is now deposited in a safe in the State, War, and Navy Building at Washington, D. C., just west of the White House. It was formerly on exhibit in a glass case here; but as it was fading so rapidly, it was, by order of the Secretary of State, in 1902, laid away, never again to be exposed to public view.

DISSENTERS' PETITION.[1]

Oct. 24, 1776.

MEMORIAL OF THE PRESBYTERY OF HANOVER TO THE GENERAL ASSEMBLY OF VIRGINIA.

To the Honorable the General Assembly of Virginia:

The memorial of the presbytery of Hanover humbly represents, that your memorialists are governed by the same sentiments which inspired the United States of America, and are determined that nothing in our power and influence shall be wanting to give success to their common cause. We would also represent that the dissenters from the church of England in this country have ever been desirous to conduct themselves as peaceable members of civil government, for which reason they have hitherto submitted to several ecclesiastical burdens and restrictions that are inconsistent with equal liberty. But now, when the many and grievous oppressions of our mother country have laid this continent under the necessity of casting off the yoke of tyranny and of forming independent governments upon equitable and liberal foundations, we flatter ourselves that we shall be freed from all the encumbrances which a spirit of domination, prejudice, or bigotry hath interwoven with most other political systems. This we are the more strongly encouraged to expect by the *Declaration of Rights!* so universally applauded for that dignity, firmness, and precision with which it delineates and asserts the privileges of society and the prerogatives of human nature, and which we embrace as the *Magna Charta* of our Commonwealth,

Sentiments inspiring memorialists.

Declarations of rights should guarantee freedom.

[1] This petition is labeled "Dissenters' Pet'n 1776, Oct. 24. Ref'd to Com. of Religion." "Old Churches and Families of Virginia," by Bishop Meade, volume ii, appendix, page 440 et seq. See also "Journal of the General Assembly of Virginia" for this and subsequent petitions.

Violation of constitutional rights endangers constitutional government.

that can never be violated without endangering the grand superstructure it was destined to sustain. Therefore we rely upon this *declaration*, as well as the justice of our honourable Legislature, to secure us the *free exercise of religion according to the dictates of our consciences;* and we should fall short in our duty to ourselves and to the many and numerous congregations under our care were we upon this occasion to neglect laying before you a statement of our religious grievances under which we have hitherto labored, and that they no longer may be continued in our present form of government.

Hardships imposed.

It is well known that in the frontier counties — which are justly supposed to contain a fifth part of the inhabitants of Virginia — the dissenter has borne the heavy burdens of purchasing glebes, building churches, and supporting the established clergy, where there were very few Episcopalians, either to assist in bearing the expense or to reap the advantage; and that throughout the other parts of the country there are so many thousands of zealous friends and defenders of our State who, besides the invidious and disadvantageous restrictions to which they have been subjected, annually pay large taxes to support an establishment from which their consciences and their principles oblige them to dissent, — all which are confessedly violations of their natural rights, and in their consequences a restraint upon freedom of enquiry and private judgment.

Enlightenment of today should insure freedom.

In this enlightened age, and in a land where all of every denomination are united in most strenuous efforts to be free, we hope and expect our representatives will cheerfully concur in removing every species of religious as well as civil bondage. Certain it is, that every argument for civil liberty gains additional strength when applied in the concerns of religion; and there is no argument in favor of estab-

lishing the Christian religion but what may be pleaded with equal propriety for establishing the tenets of Mahomet by those who believe in the Alkoran; or if this be not true, it is at least impossible for the magistrate to adjudge the right of preference among the various sects that profess the Christian faith, without erecting a chair of infallibility, which would lead us back to the church of Rome.

Christianity and Mahometanism equal before the law.

Magistrates incapable of deciding religious questions.

We beg leave further to represent that religious establishments are highly injurious to the temporal interests of any community. Without insisting upon the ambition and arbitrary practices of those who are favoured by government, or the intriguing, seditious spirit which is commonly excited by this as well as by every other kind of oppression, such establishments greatly retard population, and, consequently, the progress of arts, sciences, and manufactures. Witness the rapid growth and improvement of the northern provinces compared with this. No one can deny that the more early settlement and the many superior advantages of our country would have invited multitudes of artificers, mechanics, and all other useful members of society to fix their habitation among us, who have either remained in the place of their nativity, or preferred worse civil government and a more barren soil where they might enjoy the rights of conscience more fully than they had a prospect of doing in this. From which we infer that Virginia might now have been the capital of America and a match for the British arms, without depending upon either for the necessaries of war, had it not been prevented by her religious establishment.

Religious laws injurious to the state.

Neither can it be made to appear that the gospel needs any such civil aid. We rather conceive that our blessed Saviour declares his *kingdom is not of this world*, he renounces all dependence upon

Religion needs no assistance from the state.

Christianity exclusively spiritual.

state power; and, as his *weapons were spiritual*, and were only designed to have influence upon the judgment and hearts of men, we are persuaded that if mankind were left in the quiet possession of their inalienable religious privileges, Christianity, as in the days of the apostles, would continue to prevail and flourish in the greatest purity, by its own native excellence and under the all-disposing providence of God.

Government properly secular.

We would also humbly represent that the only proper objects of civil government are the happiness and protection of men in their present state of existence, the security of the life, liberty, and the property of the citizens, and to restrain the vicious and to encourage the virtuous, by wholesome laws equally extending to every individual; but that *the duty which we owe to our Creator, and the manner of discharging it, can only be directed by reason or conviction*, and is nowhere cognizable but at the tribunal of the Universal Judge.

Religion exempt from its cognizance.

State aid not wanted in religious affairs.

Therefore we ask no ecclesiastical establishment for ourselves, neither can we approve of them and grant it to others: this, indeed, would be giving *exclusive or separate emoluments or privileges to one set* (or sect) *of men*, without any special *public services*, to the common reproach or injury of every other denomination. And, for the reasons recited, we are induced earnestly to entreat that all laws now in force in this Commonwealth which countenance religious domination may be speedily repealed,—that all of every religious sect may be protected in the full exercise of their several modes of worship, and exempted from all taxes for the support of any church whatsoever, further than what may be agreeable to their own private choice or voluntary obligation. This being done, all partial and invidious distinctions will be abolished, to the great honor and inter-

Religious equality demanded.

est of the State, and every one be left to stand or fall according to merit, which can never be the case so long as any one denomination is established in preference to others. Survival of the fittest.

That the Great Sovereign of the universe may inspire you with unanimity, wisdom, and resolution, and bring you to a just determination on all the important concerns before you is the fervent prayer of your memorialists.

Signed by order of the Presbytery.

JOHN TODD, Moderator.

CALEB WALLACE, Presbytery Clerk.

This memorial is but one among that noted series in harmony with the Virginia Declaration of Rights and Jefferson's bill for the establishment of religious freedom, which has had such an extensive influence in our subsequent constitutional history. Every State has felt its influence and the dissenters of Virginia during the close of the eighteenth century were largely instrumental in giving effect to American political principles in their times. So earnest did they become that "numbers of petitions, memorials, etc., in manuscript are on file in the archives here from religious bodies of almost every denomination, from nearly every county in this State, during the period of the revolution." Letter of Secretary of State of Virginia, to the editor, December 20, 1893. Virginia memorials.

"In general, the petitions were remarkable for strength of reasoning, and elegance of expression. They breathed a pure and glowing attachment to republican principles; developed in eloquent strains those overpowering arguments in support of liberty in the abstract, which gain additional force when applied to liberty in concerns of religion; firmly, yet respectfully complained of burthens and restrictions inconsistent with equal rights; and expressed a cheering hope, that, when the many and grievous oppressions of the parent state had placed America under the necessity of breaking the fetters of tyranny, and of forming independent governments upon equitable and liberal foundations, non-conformists should be freed from all the incumbrances which a spirit of domination, prejudice, or bigotry, had interwoven with the regal system. . . . Character of Virginia memorials.

"Taking other views of the subject, connected with the temporal interest of the community, which a full and unrestrained enjoyment of the rights of conscience could not fail to promote; with the nature of Christianity, whose native excellence required not the aid of state power and support; with the inherent rights of men, whom no authority but that of the supreme and Universal Judge can direct and bind in the manner of discharging the duty which they owe to their Creator, they

RELIGIOUS LEGISLATION SUBVERSIVE OF LIBERTY.

April 25, 1777. MEMORIAL OF THE PRESBYTERY OF HANOVER TO THE GENERAL ASSEMBLY OF VIRGINIA.

To the Honorable the General Assembly of Virginia:

Patriotism of memorialists.

The memorial of the presbytery of Hanover, humbly represents that your memorialists and the religious denomination with which we are connected, are most sincerely attached to the common interests of the American States, and are determined that our most fervent prayers and strenuous endeavours shall ever be united with our fellow subjects to repel the assaults of tyranny and to maintain our common rights. In our former memorial we have expressed our hearty approbation of the Declaration of Rights, which has been made and adopted as the basis of the laws and government of this State; and now we take the opportunity of testifying that nothing has inspired us with greater confidence in our Legislature than the late act of the Assembly declaring that equal liberty, as well religious as civil, shall be universally extended to the good people of this country; and that all the oppressive acts of parliament respecting religion, which have been formerly enacted in the mother country, shall henceforth be of no validity or force in this Commonwealth; as also

Declarations of rights invalidate religious laws.

earnestly entreated for all religious sects 'protection in the full exercise of their several modes of worship and exemption from the payment of all taxes for the support of any church whatever, farther than what might be agreeable to their own private choice or voluntary obligation!'" Burk's "History of Virginia," volume iv (Petersburg, Virginia, 1816), pages 180, 181.

exempting dissenters from all levies, taxes, and impositions whatsoever towards supporting the church of England as it now is or hereafter may be established.

England's religious laws should here be of no force.

We would therefore have given our honorable Legislature no further trouble on this subject, but we are sorry to find that there yet remains a variety of opinions touching the propriety of a general assessment, or whether every religious society shall be left to voluntary contributions for the maintenance of the ministers of the gospel who are of different persuasions. As this matter is deferred by our Legislature to the discussion and final determination of a future assembly, when the opinions of the country in general shall be better known; we think it our indispensable duty again to repeat a part of the prayer of our former memorial: "That dissenters of every denomination may be exempted from all taxes for the support of any church whatsoever, further than what may be agreeable to the private choice or voluntary obligation of every individual; while the civil magistrates no otherwise interfere, than to protect them all in the full and free exercise of their several modes of worship." We then represented as the principal reason upon which this request is founded, that the only proper objects of civil governments are the happiness and protection of men in the present state of existence, the security of the life, liberty, and property of the citizens, and to restrain the vicious and encourage the virtuous by wholesome laws equally extending to every individual; and that the duty which we owe our Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the Universal Judge.

State-church sentiment still extant.

Sound political principles.

To illustrate and confirm these assertions, we beg leave to observe, that to judge for ourselves, and to

The rights of citizens.

engage in the exercise of religion agreeable to the dictates of our own consciences is an unalienable right, which upon the principles that the gospel was first propagated, and the reformation from popery carried on, can never be transferred to another. Neither does the church of Christ stand in need of a general assessment for its support; and most certain we are that it would be no advantage, but an injury to the society to which we belong; and as every good Christian believes that Christ has ordained a complete system of laws for the government of his kingdom, so we are persuaded that by his providence he will support it to its final consummation. In the fixed belief of this principle, that the kingdom of Christ, and the concerns of religion, are beyond the limits of civil control, we should act a dishonest, inconsistent part, were we to receive any emoluments from any human establishments for the support of the gospel.

Religious legislation injurious to good government.

Remonstrance justified.

These things being considered, we hope we shall be excused for remonstrating against a general assessment for any religious purpose. As the maxims have long been approved, that every servant is to obey his master; and that the hireling is accountable for his conduct to him from whom he receives his wages; in like manner if the legislature has any rightful authority over the ministers of the gospel in the exercise of their sacred office, and it is their duty to levy a maintenance for them as such; then it will follow that we may revive the old establishment in its former extent or ordain a new one for any sect they think proper; they are invested with a power not only to determine, but it is incumbent on them to declare who shall preach, what they shall preach; to whom, when, and at what places they shall preach; or to impose any regulations and restrictions upon religious societies that they may judge expedient.

These consequences are so plain as not to be denied; and they are so entirely subversive of religious liberty, that if they should take place in Virginia, we should be reduced to the melancholy necessity of saying with the apostles in like cases, "Judge ye whether it is best to obey God or man;" and also of acting as they acted.

Logical consequences of religious legislation.

Therefore, as it is contrary to our principles and interests; and, as we think, subversive of religious liberty, we do again most earnestly entreat that our Legislature would never extend any assessment for religious purposes to us, or to the congregations under our care.[1] And your memorialists, as in duty bound, shall ever pray for, and demean themselves as peaceable subjects of, civil government.

Reasons for remonstrance.

Signed by order of the presbytery.

RICHARD SANKEY,
Moderator.

TIMBER RIDGE, April 25, 1777.

[1] The position taken by these early Presbyterians in these remarkable memorials, that religion, being a matter of conscience, can be directed only "by reason and conviction," and not by civil legislation; that the church of Christ stands in need of no state-imposed tax for its support, and that to exact such a tax would be "subversive of religious liberty," has been sadly departed from by many, even of the same faith, in later times, in attempts to justify Sunday legislation. Thus Rev. W. F. Crafts, a Presbyterian, in his "Sabbath for Man," page 248, says: "It is the conviction of the majority that the nation cannot be preserved without religion, nor religion without the Sabbath, nor the Sabbath without laws, therefore Sabbath laws are enacted by the right of self-preservation, not in violation of liberty, but for its protection." Dr. R. C. Wylie, a Reformed Presbyterian, in his "Sabbath Laws in the United States," page 231, reasons similarly: "Our free government would be impossible without our Christian civilization; our civilization is produced and perpetuated by the Christian religion; the Christian religion cannot exist without the Christian church; the Christian church would languish and die without assemblies for public worship; assemblies for worship are impossible without a day of rest; a day of rest needs the protection of statute law." Sunday laws are relics of the old establishments. They are permanent barriers to complete religious liberty.

The position abandoned by many.

Fallacious reasoning.

EFFECTS OF RELIGIOUS LEGISLATION.

May, 1784.

MEMORIAL OF THE PRESBYTERY OF HANOVER TO THE GENERAL ASSEMBLY OF VIRGINIA.

To the Honorable Speaker and House of Delegates of Virginia:

GENTLEMEN: The united clergy of the Presbyterian church in Virginia, assembled in presbytery, request your attention to the following representation.

General sentiment in revolutionary times.

In the late arduous struggle for everything dear to us, a desire of perfect liberty, and political equality animated every class of citizens. An entire and everlasting freedom from every species of ecclesiastical domination, a full and permanent security of the unalienable rights of conscience and private judgment, and an equal share of the protection and favour of government to all denominations of Christians, were particular objects of our expectations and irrefragable claim. The happy revolution effected by the virtuous exertions of our countrymen of various opinions in religion, was a favourable opportunity of obtaining these desirable objects without faction, contention, or complaint.

When the spirit of liberty is alert.

All ranks of men, almost, felt the claims of justice, when the rod of oppression had scourged them into sensibility, and the powerful band of common danger had cordially united them together against civil encroachments. The members, therefore, of every religious society had a right to expect, and most of them did expect, that former invidious and exclusive distinctions, preferences, and emoluments conferred by the State on any one sect above others, would have been wholly removed. They justly supposed that any partiality of this kind,

any particular and illicit connection or commerce between the State and one description of Christians more than another, on account of peculiar opinions in religion, or in anything else, would be unworthy of the representatives of a people perfectly free, and an infringement of that religious liberty which enhances the value of other privileges in any state of society.

State-churchism unworthy a free people.

We, therefore, and the numerous bodies of citizens in our communion, as well as in many others, are justly dissatisfied and uneasy, that our expectations from the Legislature have not been answered in these important respects. We regret that the prejudice of education, the influence of partial custom, and habits of thinking confirmed by these, have too much confounded the distinction between matters purely religious and the objects of human legislation, and have occasioned jealousy and dissatisfaction by injurious inequalities respecting things which are connected with religious opinion, towards different sects of Christians. That this uneasiness may not appear to be entertained without ground, we would wish to state the following unquestionable facts for the consideration of the House of Delegates.

Prejudice resulting from erroneous education.

The security of our religious rights upon equal and impartial ground, *instead of being made a fundamental part of our constitution as it ought to have been*, is left to the precarious fate of common law. A matter of general and essential concern to the people is committed to the hazard of the prevailing opinion of a majority of the assembly at its different sessions. In consequence of this the Episcopal church was virtually regarded as the constitutional church, the church of the state, at the revolution; and was left by the framers of our present government, in that station of unjust pre-eminence which she had formerly acquired under the smiles of royal favour. And even when the late oppressive establish-

Ordinary law not a sufficient safeguard.

Virginia's religious establishment.

ment of that church was at length acknowledged an unreasonable hardship by the assembly in 1776, a superiority and distinction in name was still retained, and it was expressly styled the *established church* as before, which title was continued as late as the year 1778, and never formally disclaimed; our common danger at that time not permitting that opposition to the injustice of such distinction which it required and deserved.

Other inequalities.

But "a seat on the right hand of temporal glory as the established mother church" was not the only inequality then countenanced and still subsisting, of which we now have reason to regret and complain. Substantial advantages were also confirmed and secured to her, by a partial and inequitable decree of government. We hoped the time past would have sufficed for the enjoyment of those emoluments which that church long possessed without control by the abridgment of the equal privileges of others, and the aid of their property wrested from them by the hand of usurpation; but we were deceived. An estate reputed to be worth several hundred thousand pounds in churches, glebes, etc., derived from the pockets of all religious societies, was exclusively and unjustly appropriated to the benefit of *one*, without compensation or restitution to the rest, who in many places, were a large majority of the inhabitants.

Further injustice

Nor is this the whole of the injustice we have felt in matters connected with religious opinion. The Episcopal church is incorporated, and known in law as a body, so that it can receive and possess property for ecclesiastical purposes, without trouble or risk in securing it, while other Christian communities are obliged to trust to the precarious fidelity of trustees chosen for the purpose. The Episcopal clergy are considered as having a right, ex-officio, to celebrate marriages throughout the State, while unnecessary

hardships and restrictions are imposed upon other clergymen in the law relating to that subject passed in 1780, which confines their exercise of that function to those counties where they receive a special license from the court by recommendation, for recording which they are charged with certain fees by the clerk; and which exposes them to a heavy fine for delay in returning certificates of marriages to the office.

Imposition of petty burdens upon dissenting clergy.

The vestries of the different parishes, a remnant of hierarchical domination, have a right by law to levy money from the people of all denominations for certain purposes; and yet these vestrymen are exclusively required by law to be members of the Episcopal church, and to subscribe a conformity to its doctrines and discipline as *professed and practised in England.* Such preferences, distinctions, and advantages, granted by the legislature exclusively to one sect of Christians, are regarded by a great number of your constituents as glaringly unjust and dangerous. Their continuance so long in a republic, without animadversion or correction by the assembly, affords just ground for alarm and complaint to a people, who feel themselves, by the favour of Providence, happily free; who are conscious of having deserved as well from the State as those who are most favored; who have an undoubted right to think themselves as orthodox in opinion upon every subject as others, and whose privileges are as dear to them. Such partiality to any system of religious opinion whatever, is inconsistent with the intention and proper object of well directed government, and obliges men of reflection to consider the legislature which indulges it, as a party in religious differences, instead of the common guardian and equal protector of every class of citizens in their religious as well as civil rights. We have hitherto restrained our com-

Peculiar religious distinctions dangerous to liberty.

Did not protest inopportunely.

plaints from reaching our representatives, that we might not be thought to take advantages from times of confusion, or critical situations of government in an unsettled state of convulsion and war, to obtain what is our clear and incontestable right.

But as the happy restoration of peace affords leisure for reflection, we wish to state our sense of the objects of this memorial to your honorable house upon the present occasion; that it may serve to remind you of what might be unnoticed in a multitude of business, and remain as a remonstrance against future encroachments from any quarter. That uncommon liberality of sentiment, which seems daily to gain ground in this enlightened period, encourages us to hope from your wisdom and integrity, gentlemen, a redress of every grievance and remedy of every abuse. Our invaluable privileges have been purchased by the common blood and treasure of our countrymen of different names and opinions, and therefore ought to be secured in full and perfect equality to them all. We are willing to allow a full share of credit to our fellow-citizens, however distinguished in name from us, for their spirited exertions in our arduous struggle for liberty; we would not wish to charge any of them, either ministers or people, with open disaffection to the common cause of America, or with crafty dissimulation or indecision, till the issue of war was certain, so as to oppose their obtaining equal privileges in religion; but we will resolutely engage against any monopoly of the honors and rewards of government by any one sect of Christians more than the rest; for we shun not a comparison with any of our brethren for our efforts in the cause of our country, and assisting to establish her liberties, and therefore esteem it unreasonable that any of them should reap superior advantages for at most but equal merit.

Entitled to freedom.

We expect from the representatives of a free people, that all partiality and prejudice on any account whatever will be laid aside, and that the happiness of the citizens at large will be secured upon the broad basis of perfect political equality.[1] This will engage confidence in government, and unsuspicious affection towards our fellow-citizens.

Perfect political equality demanded.

We hope that the legislature will adopt some measures to remove present inequality, and resist any attempt, either at present session or hereafter, to continue those which we now complain of. Thus by preserving a proper regard to every religious denomination as the common protectors of piety and virtue, you will remove every real ground of contention, and allay every jealous commotion on the score of religion. The citizens of Virginia will feel themselves free, unsuspicious, and happy in this respect. Strangers will be encouraged to share our freedom and felicity; and when civil and religious liberty go hand in hand, our late posterity will bless the wisdom and virture of their fathers. We have the satisfaction to assure you that we are steady well wishers to the State, and your humble servants.

Blessings resulting from freedom.

THE PRESBYTERY OF HANOVER.

[1] Contrast this liberal and commendable position with the position of those churches to-day which are demanding religious laws, urging that those churches whose rights will be infringed are only "seven tenths of one per cent" of our population. They would place power in the stead of law, and their anxiety to accomplish their ends makes them forget justice and right and even humanity, and as a result of their state-churchism, scores of Christians in various parts of the country are compelled to go to jail — placed there by their loving "brother Christians." This is the difference between the Christianity of free-churchism and state-churchism.

PRINCIPLES OF RELIGIOUS LIBERTY.

October, 1784.

MEMORIAL OF THE PRESBYTERY OF HANOVER TO THE GENERAL ASSEMBLY OF VIRGINIA.

To the Honorable Speaker and House of Delegates.

Renewal of petition.

GENTLEMEN: The united clergy of the Presbyterian church of Virginia, assembled in presbytery, beg leave to again address your honorable house upon a few important subjects, in which we find ourselves interested as citizens of this State.

Eternal vigilance the price of liberty.

The freedom we possess is so rich a blessing, and the purchase of it has been so high, that we would ever wish to cherish a spirit of vigilant attention to it, in every circumstance of possible danger. We are anxious to retain a full share of all the privileges which our happy revolution affords, and cannot but feel alarmed at the continued existence of any infringement upon them, or even any indirect attempt tending to this. Impressed with this idea, as men whose rights are sacred and dear to them ought to be, we are obliged to express our sensibility upon the present occasion, and we naturally direct our appeal to you, gentlemen, as the public guardians of our country's happiness and liberty, who are influenced, we hope, by that wisdom and justice which your high station requires. Conscious of the rectitude of our intentions and the strength of our claims, we wish to speak our sentiments freely upon these occasions, but at the same time with all that respectful regard which becomes us when addressing the representatives of a great and virtuous people. It is with pain that we find ourselves obliged to renew our complaints upon the subject stated in our memorial last spring. We deeply regret that such obvious grievances should exist unredressed in a republic whose end ought to be the happiness of all the citizens.

Consciousness of rights.

Perversion of government.

We presumed that immediate redress would have succeeded a clear and just representation of them; as we expect that it is always the desire of our representatives to remove real grounds of uneasiness, and allay jealous commotions amongst the people. Justice insures peace.

But as the objects of the memorial, though very important in their nature and more so in their probable consequences, have not yet been obtained, we request that the house of delegates would be pleased to recollect what we had the honor to state to them in that paper at their last sessions; to resume the subject in their present deliberation; and to give it that weight which its importance deserves. The uneasiness which we feel from the continuance of the grievances just referred to, is increased under the prospect of an addition to them by certain exceptionable measures said to be proposed to the legislature. We have understood that a comprehensive incorporating act has been and is at present in agitation, whereby ministers of the gospel as such, of certain descriptions, shall have legal advantages which are not proposed to be extended to the people at large of any denomination. A proposition has been made by some gentlemen of the house of delegates, we are told, to extend the grace to us, amongst others, in our professional capacity. If this be so, we are bound to acknowledge with gratitude our obligations to such gentlemen for their inclination to favor us with the sanction of public authority in the discharge of our duty. But as the scheme of incorporating clergymen, *independent of the religious communities to which they belong*, is inconsistent with our ideas of propriety, we request the liberty of declining any such solitary honor should it be again proposed. To form clergymen into a distinct order in the community, and especially where it would be possible for them to have the principle direction of a considerable public Unwise propositions.

Ministers must be responsible to churches.

estate by such incorporation, has a tendency to render them independent, at length, of the churches whose ministers they are; and this has been too often found by experience to produce ignorance, immorality, and neglect of the duties of their station.

Besides, if clergymen were to be erected by the State into a distinct political body, detached from the rest of the citizens, with the express design of "enabling them to direct spiritual matters," which we all possess without such formality, it would naturally tend to introduce that antiquated and absurd system, in which government is owned, in effect, to be the fountain head of spiritual influences to the church. It would establish an immediate, a peculiar, and for that very reason, in our opinion, illicit connection between government and such as were thus distinguished. The legislature, in that case, would be the head of a religious party, and its dependent members would be entitled to all decent reciprocity, to a becoming paternal and fostering care. This, we

All state-churchism injurious.

suppose, would be giving a preference, and creating a distinction between citizens equally good, on account of something entirely foreign from civil merit, which would be a source of endless jealousies, and inadmissible in a republic or any other well directed government. The principle, too, which this system aims to establish, is both false and dangerous to religion, and we take this opportunity to remonstrate and protest against it. The real ministers of true religion derive their authority to act in the duties of their profession from a higher source than any legislature on earth, however respectable. Their office relates to the care of the soul, and preparing it for a future state of existence, and their administrations are, or ought to be, of a spiritual nature suited to this momentous concern. And it is plain from the very nature of the case, that they should neither expect nor receive from government any permission or

direction in this respect. We hope therefore that the House of Delegates shares so large a portion of that philosophic and liberal discernment which prevails in America at present, as to see this matter in its proper light,—and that they will understand too well the nature of their duty, as the equal and common guardians of the chartered rights of all the citizens, to permit a connection of the kind we have just now mentioned, to subsist between them and the spiritual instructors of any religious denomination in the State. The interference of government in religion cannot be indifferent to us, and as it will probably come under consideration at the present session of the assembly, we request the attention of the honorable house to our sentiments upon this head.

Legislature should insist upon freedom in religion.

We conceive that human legislation ought to have human affairs as they relate to this world alone for its concern. Legislators in free states possess delegated authority for the good of the community at large in its political or civil capacity.

Should confine itself to civil jurisdiction.

The existence, preservation, and happiness of society should be their only object; and to this their public cares should be confined. Whatever is not materially connected with this lies not within their province as statesmen. The thoughts, the intentions, the faith, and the consciences of men, with their modes of worship, lie beyond their reach, and are ever to be referred to a higher and more penetrating tribunal. These internal and spiritual matters cannot be measured by human rules, nor be amenable to human laws. It is the duty of every man, for himself, to take care of his immortal interests in a future state, where we are to account for our conduct as individuals; and it is by no means the business of a legislature to attend to this, for THERE governments and states as collective bodies shall no more be known.

Temporal affairs its sole sphere.

Religious concerns beyond its province.

Religious systems should be outside state control.

Religion, therefore, as a spiritual system, and its ministers in a professional capacity, ought not to be under the direction of the state.

Neither is it necessary to their existence that they should be publicly supported by a legal provision for the purpose, as tried experience hath often shown; although it is absolutely necessary to the existence and welfare of every political combination of men in society to have the support of religion and its solemn institutions as affecting the conduct of rational beings more than human laws can possibly do. On this account it is wise policy in legislatures to seek its alliance and solicit its aid in a civil view, because of its happy influence upon the morality of its citizens, and its tendency to preserve the veneration of an oath, or an appeal to heaven, which is the cement of the social union. It is upon this principle alone, in our opinion, that a legislative body has a right to interfere in religion at all, and of consequence we suppose that this interference ought only to extend to the preserving of the public worship of the Deity, and the supporting of institutions for inculcating the great fundamental principles of religion, without which society could not easily exist. Should it be thought necessary at present for the assembly to exert this right of supporting religion in general by an assessment on all the people, we would wish it to be done on the most *liberal plan*. A general assessment of the kind we have heard proposed, is an object of such consequence that it excites much anxious speculation amongst your constituents.

Protection of religion the extent of state authority.

Constitutional provisions should be enforced.

We therefore earnestly pray that nothing may be done in the case inconsistent with the proper objects of human legislation or the Declaration of Rights as published at the revolution. We hope that the assessment will not be proposed under the idea of supporting religion as a spiritual system, relating to the

care of the soul and preparing it for its future destiny. We hope that no attempt will be made to point out articles of faith, that are not essential to the preservation of society; or to settle modes of worship; or to interfere in the internal government of religious communities; *or to render the ministers of religion independent of the will of the people whom they serve.* We expect from our representatives that careful attention to the political equality of all the citizens, which a republic ought ever to cherish; and that no scheme of an assessment will be encouraged which will violate the happy privilege we now enjoy of thinking for ourselves in all cases where conscience is concerned.

Care of the soul should be left to the church.

We request the candid indulgence of the honorable house to the present address; and their most favorable construction of the motives which induce us to obtrude ourselves into public notice. We are urged by a sense of duty. We feel ourselves impressed with the importance of the present crisis. We have expressed ourselves in the plain language of freemen, upon the interesting subjects which called for animadversion; and we hope to stand excused with you, gentlemen, for the manner in which it is executed, as well as for the part we take in the public interests of the community. In the present important moment, we conceived it criminal to be silent; and have therefore attempted to discharge a duty which we owe to our religion as Christians; to ourselves as freemen; and to our posterity, who ought to receive from us a precious birthright of perfect freedom and political equality.

Motives prompting remonstrance.

That you may enjoy the direction of Heaven in your present deliberations, and possess in a high degree the spirit of your exalted station, is the prayer of your sincere well wishers.

Invocation.

THE PRESBYTERY OF HANOVER.

REASONS FOR REMONSTRATION.

Aug. 13, 1785. MEMORIAL OF THE PRESBYTERIANS OF VIRGINIA TO THE GENERAL ASSEMBLY.

To the Honorable the General Assembly of the Commonwealth of Virginia:

Presbyterian convention

The ministers and lay representatives of the Presbyterian church in Virginia, assembled in convention, beg leave to address you.

As citizens of this State, not so by accident, but by choice, and having willingly conformed to the system of civil policy adopted for our government, and defended it with the foremost at the risk of everything dear to us, we feel ourselves deeply interested in all measures of the Legislature.

When the late happy revolution secured to us an exemption from British control, we hoped that the gloom of injustice and usurpation would have been forever dispelled by the cheering rays of liberty and independence. This inspired our hearts with resolution in the most distressful scenes of adversity, and nerved our arm in the day of battle. But our hopes have since been overcast with apprehension when we found how slowly and unwillingly ancient distinctions among the citizens on account of religious opinions were removed by the legislature. For although the glaring partiality of obliging all denominations to support the one which had been the favorite of government, was pretty early withdrawn, yet an evident predilection in favor of that church still subsisted in the acts of the assembly. Peculiar distinctions and the honor of an important name were still continued; and these are considered as equally partial and injurious with the ancient emoluments. Our apprehensions on account of the continuance of these,

Fears of religious legislation.

which could have no other effect than to produce jealous animosities and unnecessary contentions among different parties, were increased when we found that they were tenaciously adhered to by the government, notwithstanding the remonstrances of several Christian societies. To increase the evil a manifest disposition has been shown by the State to consider itself as possessed of supremacy in *spirituals* as well as *temporals;* and our fears have been realized in certain proceedings of the general assembly at their last sessions. The engrossed bill for establishing a provision for the teachers of the Christian religion and the act for incorporating the Protestant Episcopal church, so far as it secures to that church, the churches, glebes, etc., procured at the expense of the whole community, are not only evidences of this, but of an impolitic partiality which we are sorry to have observed so long.

Natural effect.

Remonstrances of Christians.

We therefore, in the name of the Presbyterian church in Virginia, beg leave to exercise our privilege as freemen in remonstrating against the former absolutely, and against the latter under the restrictions above expressed.

Reasons for remonstrating.

We oppose the bill,

Because it is a departure from the proper lines of legislation;

Outside the legislative sphere.

Because it is unnecessary, and inadequate to its professed end — impolitic, in many respects — and a direct violation of the Declaration of Rights.

It is unconstitutional.

The end of civil government is security to the temporal liberty and property of mankind, and to protect them in the free exercise of religion. Legislators are invested with powers from their constituents for these purposes only, and their duty extends no further. Religion is altogether personal, and the right of exercising it unalienable; and it is not, cannot, and ought not to be, resigned to the will of the

Constitutional limits of government.

Limits of authority.

society at large; and much less to the legislature, which derives its authority wholly from the consent of the people, and is limited by the original intention of civil associations.

Authority in religion never delegated to government.

We never resigned to the control of government our right of determining for ourselves in this important article, and acting agreeably to the convictions of reason and conscience in discharging our duty to our Creator. And therefore it would be an unwarrantable stretch of prerogative in the legislature to make laws concerning it, except for protection. And it would be a fatal symptom of abject slavery in us were we to submit to the usurpation.

Christianity needs no state aid.

The bill is also an unnecessary and inadequate expedient for the end proposed. We are fully persuaded of the happy influence of Christianity upon the morals of men; but we have never known it, in the history of its progress, so effectual for this purpose, as when left to its native excellence and evidence to recommend it, under the all-directing providence of God, and free from the intrusive hand of the civil magistrate. Its divine Author did not think it necessary to render it dependent on earthly governments. And experience has shown that this dependence, where it has been effected, has been an injury rather than an aid. It has introduced corruption among the teachers and professors of it, wherever it has been tried, for hundreds of years, and has been destructive of genuine morality, in proportion to the zeal of the powers of this world, in arming it with the sanction of legal terrors, or inviting to its profession by honors or rewards.

Religion a matter of conscience.

It is urged, indeed, by the abettors of this bill, that it would be the means of cherishing religion and morality among the citizens. But it appears from fact that these can be promoted only by the internal conviction of the mind, and its vol-

untary choice, which such establishments cannot effect. Religion voluntary.

We farther remonstrate against the bill as an impolitic measure.

It disgusts so large a proportion of citizens, that it would weaken the influence of government in other respects, and diffuse a spirit of opposition to the rightful exercise of constitutional authority, if enacted into a law. Weakens power of government.

It partially supposes the Quakers and Mennonists to be more faithful in conducting the religious interests of their societies than the other sects — which we apprehend to be contrary to fact.

It unjustly subjects men who may be good citizens, but who have not embraced our common faith, to the hardship of supporting a system they have not as yet believed the truth of; and deprives them of their property, for what they do not suppose to be of importance to them. Works injustice.

It establishes a precedent for further encroachments, by making the legislature judges of religious truth. If the assembly have a right to determine the preference between Christianity and the other systems of religion that prevail in the world, they may also, at a convenient time, give preference to some favored sect among Christians. Bad precedent established.

It discourages the population of our country by alarming those who may have been oppressed by religious establishments in other countries, with fears of the same in this; and by exciting our own citizens to emigrate to other lands of greater freedom.

It revives the principle which our ancestors contested to blood, of attempting to reduce all religions to one standard by the force of civil authority. Overturns American principles.

And it naturally opens a door for contention among citizens of different creeds, and different opinions respecting the extent of the powers of government.

Violation of Constitution.

The bill is also a direct violation of the Declaration of Rights, which ought to be the standard of all laws. The sixteenth article is clearly infringed upon by it, and any explanation which may have been given of it by the friends of this measure in the legislature, so as to justify a departure from its literal construction, might also be used to deprive us of other fundamental principles of our government.

For these reasons and others that might be produced, we conceive it our duty to remonstrate and protest against the said bill; and earnestly urge that it may not be enacted into a law.

Corporating acts should be purely civil.

We also wish to engage your attention a little further, while we request a revision of the act for incorporating the Protestant Episcopal church; and state our reasons for this request. We do not desire to oppose the incorporation of that church for the better management of its *temporalities;* neither do we wish to lessen the attachment of any of the members of the legislature in a private capacity, to the interests of that church. We rather wish to cultivate a spirit of forbearance and charity towards the members of it, as the servants of one common Master, who differ in some particulars from each other. But we cannot consent that they shall receive particular notice or favor from government as a Christian society; nor peculiar distinctions or emoluments.

We find by the act, that the convenience of the Episcopal church hath been consulted by it, in the management of their interests as a religious society, at the expense of other denominations. Under the former establishment, there were perhaps few men who did not at length perceive the hardships and injustice of a compulsory law, obliging the citizens of this State by birthright free, to contribute to the support of a religion from which their reason and conscience obliged them to dissent. Who, then,

would not have supposed that the same sense of justice which induced the legislature to dissolve the grievous establishment, would also have induced them to leave to common use the property in churches, glebes, etc., which had been acquired by common purchase. Proper course.

To do otherwise was, as we conceive, to suppose that long prescription could sanction injustice; and that to persist in error is to alter the essential difference between right and wrong. As Christians, also, the subjects of Jesus Christ who are wholly opposed to the exercise of spiritual powers by civil rulers, we conceive ourselves obliged to remonstrate against that part of the incorporating act which authorizes and directs the regulation af spiritual concerns. This is an invasion of Divine prerogative that is highly exceptionable on that account as well as on account of the danger to which it exposes our religious liberties. Jesus Christ hath given sufficient authority to his church for every lawful purpose; and it is forsaking his authority and direction for that of fallible men, to expect or to grant the sanction of civil law to authorize the regulation of any Christian society. It is also dangerous to our liberties, because it creates an invidious distinction on account of religious opinions, and exalts to a superior pitch of grandeur, as the church of the State, a society which ought to be contented with receiving the same protection from government which the other societies enjoy, without aspiring to superior notice or regard. The legislature assumes to itself by that law the authoritative direction of this church in spirituals, and can be considered in no other light than its head, peculiarly interested in its welfare; a matter which cannot be indifferent to us though this authority has only as yet been extended to those who have requested it, or acquiesced in it. This church is now considered

Invasion of God's prerogative.

Legislative assumptions.

Natural tendencies.

as the only regular church in the view of the law; and it is thereby raised to a state of unjust pre-eminence over others. And how far it may increase in dignity and influence in the State, by these means, at a future day, and especially when aided by the emoluments which it possesses, and the advantages of funding a very large sum of money without account, time alone can discover. But we esteem it our duty to oppose the act thus early, before the matter be entangled in precedents more intricate and dangerous. Upon the whole, therefore, we hope that the exceptionable parts of this act will be repealed by your honorable house; and that all preferences, distinctions, and advantages, contrary to the fourth article of the Declaration of Rights will be forever abolished.

Constitutions should insist upon the fullest liberty.

We regret that full equality in all things, and ample protection and security to religious liberty were not incontestably fixed in the Constitution of the government. But we earnestly request that the defect may be remedied, as far as it is possible for the legislature to do it, by adopting the bill in the revised laws for establishing religious freedom.

Invocation.

That Heaven may illuminate your minds with all that wisdom which is necessary for the important purposes of your deliberation, is our earnest wish. And we beg leave to assure you, that however warmly we may engage in preserving our religion free from the shackles of human authority, and opposing claims of spiritual domination in civil powers, we are zealously disposed to support the government of our country, and to maintain a due submission to the lawful exercise of its authority.

Signed by order of the Convention.

JOHN TODD,
Chairman.

BETHEL, Augusta County, 13th August, 1785.

MADISON'S MEMORIAL.[1]

DURING THE YEAR 1785.

To the Honorable, the General Assembly of the Commonwealth of Virginia:

A MEMORIAL AND REMONSTRANCE.

We, the subscribers, citizens of the said commonwealth, having taken into serious consideration a bill printed by order of the last session of General Assembly, entitled, "A bill establishing a provision for teachers of the Christian religion,"[2] and conceiving that the

Preamble.

Bill causing remonstrance.

[1] "Writings of James Madison," published by order of Congress, (Philadelphia, 1865), volume i, page 162, *et seq.*

[2] The bill was quite liberal, as it allowed every person to pay his money to his own denomination; or, if he did not wish it to go to any denomination, it was to go to the maintenance of a school in the county. The objection to it was that *it gave the Christian religion a preference over other beliefs, which was opposed to religious equality.* Madison said that it was "chiefly obnoxious on account of *its dishonorable principle and dangerous tendency.*" In a letter to Thomas Jefferson, dated at Richmond, January 9, 1785, Madison gave the following account of the bill:

Liberality of the bill.

Objection to bill.

Its dishonorable principle and dangerous tendency.

"A resolution for a legal provision for the 'teachers of the Christian religion' had early in the session been proposed by Mr. Henry, and, in spite of all the opposition that could be mustered, carried by forty-seven against thirty-two votes. Many petitions from below the Blue Ridge had prayed for such a law; and though several from the Presbyterian laity beyond it were in a contrary style, the clergy of that sect favored it. The other sects seemed to be passive. The resolution lay some weeks before a bill was brought in, and the bill some weeks before it was called for; after the passage of the incorporating act [incorporating the Protestant Episcopal Church], it was taken up, and, on the third reading, ordered by a small majority to be printed for consideration. The bill, in its present dress, proposes a tax of blank per cent on all taxable property, for support of teachers of the Christian religion. Each person when he pays his tax, is to name the society to which he dedicates it, and in case of refusal to do so, the tax is to be applied to the maintenance of a school in the county. As the bill stood for some time, the application in such cases was to be made by the Legislature to pious uses. In a Committee of the Whole it was determined, by a ma-

History of the bill.

Laity opposed it. Presbyterian clergy favored it.

Each person names his own religion.

A dangerous abuse of power.

same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free State to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said bill —

Reasons for remonstration.

1. Because we hold it for a fundamental and undeniable truth, "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence."[1] The religion, then, of every man must be left to the conviction and conscience of every man; and *it is the right of every man to exercise it as these may dictate.* This right is in its nature an unalienable right. It is unalienable, because

Right to the free exercise of religion is inalienable.

Attempt to make bill more liberal.

The discrimination re-instated.

Its dishonorable principle and dangerous tendency.

jority of seven or eight, that the word 'Christian' should be exchanged for the word 'religious.' On the report to the House, the pathetic zeal of the late Governor Harrison gained a like majority for re-instating discrimination. Should the bill pass into a law in its present form, it may and will be easily eluded. It is chiefly obnoxious on account of its dishonorable principle and dangerous tendency." "Writings of James Madison," volume i, pages 130, 131.

Madison calls it an act for the corruption of our religious system.

In a letter to Marquis Fayette on March 20, he remarked: "Our Legislature . . . did not pass the act for the corruption of our religious system." *Ibid.*, page 140. It was laid over until the next session, and in the meantime Madison wrote and circulated his "Memorial and Remonstrance," which resulted in the defeat of the bill, and in the enactment of Jefferson's "Act for the establishment of religious freedom" in its stead. Thus by earnest effort on the part of Jefferson and Madison, the principle of absolute equality among all religions and among all religious believers — for the Jew, the Mahometan, the infidel, etc., as well as for the Christian — was established in Virginia as an exemplary precedent for other States. In a letter of May 29, to James Monroe, Madison said: "I have heard of several counties where the late representatives have been laid aside for voting for the bill, and not of a single one where the reverse has happened. The Presbyterian clergy, too, who were, in general, friends to the scheme, are already in another tone, either compelled by the laity of that sect, or alarmed at the probability of farther interferences of the Legislature if they once begin to dictate in matters of religion." "Writings of James Madison," volume i, pages 154, 155.

Efforts of Jefferson and Madison.

Absolute equality of all.

Representatives defeated on account of voting for the bill.

Presbyterian clergy become alarmed for themselves.

[1] "Declaration of Rights," article 16.

the opinions of men, depending only on the evidence contemplated in their own minds, cannot follow the dictates of other men. It is unalienable, also, because what is here a right towards men is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of civil society. Before any man can be considered as a member of civil society, he must be considered as a subject of the Governor of the universe; and if a member of civil society who enters into any subordinate association must always do it with a reservation of his duty to the general authority, much more must every man who becomes a member of any particular civil society do it with a saving of his allegiance to the universal Sovereign. We maintain, therefore, that in matters of religion no man's right is abridged by the institution of civil society, and that religion is wholly exempt from its cognizance. True it is, that no other rule exists by which any question which may divide a society can be ultimately determined than the will of the majority; but it is also true that the majority may trespass upon the rights of the minority.

Inalienability of religious liberty.

Duty of every man.

We must obey God rather than man.

Religious rights of no man abridged by entering society.

Religion is wholly exempt from the cognizance of government.

Majority may trespass upon rights of minority.

2. Because, if religion be exempt from the authority of the society at large, still less can it be subject to that of the legislative body. The latter are but the creatures and vicegerents of the former. Their jurisdiction is both derivative and limited. It is limited with regard to the coördinate departments; more necessarily is it limited with regard to the constituents. The preservation of a free government requires, not merely that the metes and bounds which separate each department of power be invariably maintained, but more especially that neither

Legislatures no authority whatever over religion.

Rights of people are supreme.

Encroaching rulers are tyrants.

Submitting people are slaves.

of them be suffered to overleap the great barrier which defends the rights of the people. The rulers who are guilty of such an encroachment exceed the commission from which they derive their authority, and are tyrants. The people who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

First step should cause alarm.

3. Because it is proper to take alarm at the first experiment upon our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much soon to forget it. *Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish, with the same ease, any particular sect of Christians,* in exclusion of all other sects? that the same authority which can force a citizen to contribute *three pence only* of his property for the support of any one establishment, may force him to conform to any other establishment in all cases whatsoever?

Precedents dangerous.

The principle itself should be opposed.

Establishment of Christianity opposed.

Smallest infringements tyrannical.

Equality the right basis of every law.

4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable in proportion as the validity or expediency of any law is more liable to be impeached. "If all men are by nature *equally* free and independent,"[1] all men are to be considered as entering into society on *equal* conditions; *as relinquishing no more*, and, therefore, *retaining no less, one than another, of their natural rights.* Above all,

All men equal.

No one has less rights than another.

[1] "Declaration of Rights," article 1.

are they to be considered as retaining an "*equal* title to the free exercise of religion according to the dictates of conscience."[1] Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the religion which we believe to be of divine origin, *we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us.* If this freedom be abused, it is an offense against God, not against man. To God, therefore, not to man, must an account of it be rendered. *As the bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions.* Are the Quakers and Mennonists the only sects who think a compulsive support of their religions unnecessary and unwarrantable? Can their piety alone be entrusted with the care of public worship? Ought their religions to be endowed above all others with extraordinary privileges by which proselytes may be enticed from all others? We think too favorably of the justice and good sense of these denominations to believe that they either covet preëminences over their fellow-citizens, or that they will be seduced by them from the common opposition to the measure.[2]

Retention of religious equality of paramount importance.

No *Christian* can deny equal freedom to unbelievers.

Equality is violated in preferences and exemptions.

[1] "Declaration of Rights," article 16.

[2] A similar favor was held out to Sabbatarians by the Sunday-rest agitators. A Sunday bill was introduced in the Senate of the United States, May 21, 1888, and, largely through the opposition of Sabbatarians, was killed. The following year *another Sunday bill was introduced, but containing a clause exempting conscientious observers of the seventh day from its operations.* It seems, however, that they, too, had too much justice and good sense to either covet preëminence over their fellow-citizens, or to be seduced by the favor from the common opposition to the measure. Professor Jones, their representative at the hearing held February 18, 1890, before the House Committee on the District of Columbia, in the United States Congress, speaking on this point, said:

Attempted check on Sabbatarian opposition.

"Why, then, does he [Mr. Crafts] propose to exempt these [Seventh-day Adventists and Seventh-day Baptists]? Is it out of respect

Reasons for exempting Sabbatarians.

The magistrate not competent to decide what is religious truth.

An arrogant pretension.

5. Because the bill implies either that the civil magistrate is a competent judge of religious truths, or that he may employ religion as an engine of civil policy. The first is an arrogant pretension, falsified by the contradictory opinions of rulers in all ages and throughout the world; the second, an unhallowed perversion of the means of salvation.

for them, or a desire to help them in their good work? Not much. *It is hoped by this to check their opposition until Congress is committed to the legislation.*

The words of leading Sunday-rest agitators.

"How do we know this? We know it by their own words. The lady who spoke here this morning as the representative of the Woman's Christian Temperance Union, Mrs. Catlin, said in this city, 'We have given them an exemption clause, and that, we think, will take the wind out of their sails.' Well, if our sails were dependent upon legislative enactments, and must needs be trimmed to political breezes, such a squall as this might take the wind out of them. But so long as they are dependent alone upon the power of God, wafted by the gentle influences of the grace of Jesus Christ, such squalls become only prospering gales to speed us on our way.

Object of the proposed exemption.

"By this, gentlemen, you see just what is the object of that proposed exemption — that it is only to check our opposition until they secure the enactment of the law, and that they may do this the easier. Then when Congress shall have been committed to the legislation, it can repeal the exemption upon demand, and then the advocates of the Sunday law will have exactly what they want. I am not talking at random here. I have the proofs of what I am saying. They expect a return for this exemption. It is not extended as a guaranteed right, but as a favor that we can have if we will only pay them their own stated price for it. As a proof of this I read again from Mr. Crafts's book, page 262:

Legislatures too lenient to Sabbatarians!

"'The tendency of legislatures and executive officers toward those who claim to keep a Saturday Sabbath is to over-leniency rather than to over-strictness.' . . .

"Again I read, and here is the point to which I wish especially to call the attention of the committee. It shows that they intend we shall pay for the exemption which they so over-generously offer:

A sample of exemplary generosity — granting what is an inherent right!

"'Instead of reciprocating the generosity shown toward them by the makers of Sabbath laws, these seventh-day Christians expend a very large part of their energy in antagonizing such laws, seeking, by the free distribution of tracts and papers, to secure their repeal or neglect.'" "Arguments on the Breckinridge Sunday Bill" (New York, 1890), page 37 *et seq.*

6. Because the establishment proposed by the bill is not requisite for the support of the Christian religion. To say that it is, is a contradiction to the Christian religion itself, for every page of it disavows a dependence on the powers of this world. It is a contradiction to fact, for it is known that this religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been left to its own evidence and the ordinary care of providence. Nay, it is a contradiction in terms; for a religion not invented by human policy must have preëxisted and been supported before it was established by human policy. It is, moreover, to weaken in those who profess this religion a pious confidence in its innate excellence and the patronage of its Author; and to foster in those who still reject it a suspicion that its friends are too conscious of its fallacies to trust it to its own merits.

Christian religion needs not human aid.

Success of Christianity unsupported by human law.

Deleterious effects of establishing Christianity.

7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries has the legal establishment of Christianity been on trial. What have been its fruits? More or less, in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. Inquire of the teachers of Christianity for the ages in which it appeared in its greatest luster; those of every sect point to the ages *prior to its incorporation with civil policy*. Propose a restoration of this primitive state, in which its teachers depended on the voluntary rewards of their flocks; — many of them predict its downfall. On which side ought their testimony to have greatest weight; — when for, or when against, their interest?

Experience of the past.

Effect on clergy and laity.

Greatest purity of the Christian religion prior to its receiving state aid.

Establishment of Christianity not necessary.

8. Because the establishment in question is not necessary for the support of civil government. If it be urged as necessary for the support of civil government only as it is a means of supporting religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If religion be not within the cognizance of civil government, how can its legal establishment be necessary to civil government? What influence, in fact, have ecclesiastical establishments had on civil society? In some instances they have been seen to erect a spiritual tyranny on the ruins of civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen the guardians of the liberties of the people. Rulers who wished to subvert the public liberty may have found in established clergy convenient auxiliaries. A just government, instituted to secure and perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any sect, nor suffering any sect to invade those of another.

Religion not in the cognizance of government.

Effects of ecclesiastical establishments.

Good government secures to every citizen equal religious enjoyment.

A departure from the policy of our government.

A sad degeneracy.

Equality of citizens invaded.

Similarity to Inquisition.

9. Because the proposed establishment is a departure from that generous policy which, offering an asylum to the persecuted and oppressed of every nation and religion, promised a luster to our country, and an accession to the number of its citizens. What a melancholy mark is the bill of sudden degeneracy! Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of citizens all those whose opinions in religion do not bend to those of the legislative authority. Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other the last in the career

of intolerance. The magnanimous sufferer under this cruel scourge in foreign regions must view the bill as a beacon on our coast warning him to seek some other haven, where liberty and philanthropy, in their due extent, may offer a more certain repose from his troubles.

Sufferers from persecutions will be repelled.

10. Because it will have a like tendency to banish our citizens. The allurements presented by other situations are every day thinning their number. To superadd a fresh motive to emigration by revoking the liberty which they now enjoy, would be the same species of folly which has dishonored and depopulated flourishing kingdoms.

Effect on emigration.

11. Because it will destroy that moderation and harmony which the forbearance of our laws to intermeddle with religion has produced among its several sects. Torrents of blood have been spilt in the Old World in consequence of vain attempts of the secular arm to extinguish religious discord by proscribing all differences in religious opinion. Time has at length revealed the true remedy. Every relaxation of narrow and rigorous policy, wherever it has been tried, has been found to assuage the disease. The American theater has exhibited proofs that equal and complete liberty, if it does not wholly eradicate it, sufficiently destroys its malignant influence on the health and prosperity of the State. If, with the salutary effects of this system under our own eyes, we begin to contract the bounds of religious freedom, we know no name which will too severely reproach our folly. At least, let warning be taken at the first-fruits of the threatened innovation. The very appearance of the bill has transformed "that Christian forbearance, love, and charity,"[1] which of late mutually prevailed, into animosities and jealousies, which

Religious preferences foster discord.

Effect of prescribing religious differences.

Salutary effect of equal and complete liberty.

Threatened innovations should be repulsed.

[1] "Declaration of Rights," article 16.

Dangers of religious legislation.

may not soon be appeased. What mischiefs may not be dreaded, should this enemy to the public quiet be armed with the force of law?

Preference of Christian religion detrimental to itself.

12. Because the policy of the bill is adverse to the diffusion of the light of Christianity. The first wish of those who enjoy this precious gift ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false religions, and how small is the former! Does the policy of the bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of revelation from coming into the region of it, and countenances by example the nations who continue in darkness in shutting out those who might convey it to them. Instead of leveling, as far as possible, every obstacle to the victorious progress of truth, the bill, with an ignoble and unchristian timidity, would circumscribe it with a wall of defense against the encroachments of error.

Evangelization retarded.

Ignoble and unchristian timidity exhibited.

Injurious tendencies in general.

13. Because attempts to enforce, by legal sanctions, acts obnoxious to so great a proportion of citizens, tend to enervate the laws in general, and to slacken the bands of society. If it be difficult to execute any law which is not generally deemed necessary or salutary, what must be the case where it is deemed invalid and dangerous? And what may be the effect of so striking an example of impotency in the government on its general authority?

The great importance of the measure.

14. Because a measure of such singular magnitude and delicacy ought not to be imposed without the clearest evidence that it is called for by a majority of citizens; and no satisfactory method is yet proposed by which the voice of the majority in this case may be determined, or its influence secured. "The people of the respective counties are, indeed,

requested to signify their opinion respecting the adoption of the bill to the next session of the Assembly." But the representation must be made equal before the voice either of the representatives or of the counties will be that of the people. Our hope is, that neither of the former will, after due consideration, espouse the dangerous principle of the bill. Should the event disappoint us, it will still leave us in full confidence that a fair appeal to the latter will reverse the sentence against our liberties.

Request for expression of opinion.

Hopes for the ill success of the dangerous principle.

15. Because, finally, "the equal right of every citizen to the free exercise of his religion, according to the dictates of conscience," is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the declaration of those rights "which pertain to the good people of Virginia as the basis and foundation of government,"[1] it is enumerated with equal solemnity, or rather with studied emphasis. Either, then, we must say that the will of the Legislature is the only measure of their authority, and that in the plenitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred. Either we must say that they may control the freedom of the press, may abolish the trial by jury, may swallow up the executive and judiciary powers of the State; nay, that they may despoil us of our very right of suffrage, and erect themselves into an independent and hereditary Assembly; or we must say that they have no authority to enact into a law the bill under consideration.

Equal rights in the exercise of religion held by same tenure with other rights.

A natural right.

If legislatures can interfere with religion, they can take away all fundamental rights.

Either we must say they are omnipotent, or that they can establish no religious preferences.

We, the subscribers, say that the General Assembly of this commonwealth have no such authority.

Declaration of petitioners.

1 "Declaration of Rights," title; *ante* page 81-84.

Showing preference for the Christian religion a dangerous usurpation.

Invocation to the Supreme Lawgiver.

And in order that no effort may be omitted on our part against so dangerous an usurpation, we oppose to it this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the universe, by illuminating those to whom it is addressed, may, on the one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them; and, on the other, guide them into every measure which may be worthy of his blessing, redound to their own praise, and establish more firmly the liberties, the prosperity, and the happiness of the commonwealth.[1]

Prayer was answered and bill defeated.

[1] The prayer of these magnanimous and exemplary Christians was answered; for the bill "establishing a provision for the teachers of the Christian religion" was defeated, and Jefferson's "Act for establishing religious freedom," *ante* page 132, was passed by the Assembly in its stead.

Two invaluable documents.

There are two documents that are invaluable in arriving at a proper conclusion in reference to the views held by our early statesmen — the famous "Act for establishing religious freedom," written by Thomas Jefferson, and the celebrated "Memorial and Remonstrance," written by James Madison, and circulated and signed in the remotest parts of the State.

The inception of the memorial.

In reference to the inception of this memorial, he said, forty years afterwards, in a letter to George Mason: "Your highly distinguished ancestor, Col. Geo. Mason, Col. Geo. Nicholas also possessing much public weight, and some others, thought it would be advisable that a remonstrance against the bill should be prepared for general circulation and signature, and imposed on me the task of drawing up such a paper. This draught, having received their sanction, a large number of printed copies were distributed, and so extensively signed by the people of every religious denomination, that at the ensuing session the projected measure was entirely frustrated; and under the influence of the public sentiment thus manifested, the celebrated bill 'establishing religious freedom' enacted a permanent barrier against future attempts on the rights of conscience, as declared in the great charter prefixed to the Constitution of the State." "Writings of James Madison," volume iii, page 526.

Very extensively signed by Christians.

Jefferson's bill a permanent barrier against religious legislation.

Letter to General La Fayette.

In a letter to General La Fayette, dated at Montpelier, November, 1826, Madison gave the following account of the controversy:

"In the year 1775, a bill was introduced under the auspices of Mr. Henry, imposing a general tax for the support of 'teachers of the Christian religion.' It made a progress, threatening a majority in its favor. As an expedient to defeat it, we proposed that it should be post-

poned to another session, and printed in the meantime for public consideration. Such an appeal in a case so important and so unforseen could not be resisted. With a view to arouse the people, it was thought proper that a memorial should be drawn up, the task being assigned to me, to be printed and circulated through the State for a general signature. The experiment succeeded. The memorial was so extensively signed by the various religious sects, including a considerable portion of the old hierarchy, that the projected innovation was crushed; and, under the influence of the popular sentiment thus called forth, the well-known bill prepared by Mr. Jefferson, for 'establishing religious freedom,' passed into a law, as it now stands in our code of statutes." "Writings of James Madison," volume iii, page 543.

Postponement.

Extensively signed by Christians.

Adoption of Jefferson's bill.

On the importance of consulting the writings of our early statesmen to obtain correct views of the principles advocated by them, Madison says:

"It has been the misfortune of history, that a personal knowledge and an impartial judgment of things rarely meet in the historian. The best history of our country, therefore, must be the fruit of contributors bequeathed by cotemporary actors and witnesses to successors who will make an unbiased use of them. And if the abundance and authenticity of the materials which still exist in the private as well as public repositories among us should descend to hands capable of doing justice to them, the American history may be expected to contain more truth, and lessons certainly not less valuable, than those of any country or age." "Writings of James Madison," volume iii, pages 308, 309.

Importance of American history.

Both Jefferson and Madison were opposed to the state's having *anything whatever* to do with regulating religious observances of any kind; and the liberal spirit supported them. But as this spirit is supplanted by self-interests, the intolerance of state-churchism again manifests itself in reviving the old religious laws, and prosecuting Sabbatarians for Sunday labor, etc. Jefferson, foreseeing this, desired to have all religious laws swept from the statute books, not willing to have them remain as a dead letter, which might at any time be revived by the partisan zealot. In his "Notes on Virginia," query xvii, Jefferson says:

The state should have nothing whatever to do with religion.

"Besides, the *spirit of the times may alter, will alter.* Our rulers will become corrupt, our people careless. A single zealot may commence persecution, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They will be forgotten, therefore, and *their rights disregarded.* They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. *The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.*"

Danger from the zealot.

Danger from intolerent laws unrepealed.

Dec. 16, 1785.

AN ACT

FOR ESTABLISHING RELIGIOUS FREEDOM.[1]

God has created the mind free.

Well aware that Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burdens, or by civil incapacita-

[1] "Works of Thomas Jefferson," volume viii, page 454 *et seq.*; "Collection of the Laws of Virginia," by W. W. Hening, volume xii, page 84. Jefferson took more pride in this "Act for establishing religious freedom" than in anything else he ever wrote, except that immortal document, the Declaration of Independence. The following is a portion of an interesting letter written to his warm friend, James Madison:

Jefferson's pride in the Virginia bill for establishing religious freedom.

Letter to Madison from Paris.

"PARIS, December 16, 1786.

Reception of the act in Europe.

Its translation and publication.

". . . The Virginia act for religious freedom has been received with infinite approbation in Europe, and promulgated with enthusiasm. I do not mean by the governments, but by the individuals who compose them. It has been translated into French and Italian, has been sent to most of the courts of Europe, and has been the best evidence of the falsehood of those reports which stated us to be in anarchy. It is inserted in the new Encyclopedia, and is appearing in most of the publications respecting America. . . ." "Works of Thomas Jefferson," volume ii, pages 55, 56.

Jefferson endeavored to effect this disestablishment a decade before. Speaking of the General Assembly of 1776, Parton says:

Efforts made a decade before.

"Petitions for the repeal of statutes oppressive of the conscience of dissenters came pouring in upon the Assembly from the first day of the session. These being referred to the Committee of the Whole, led to the severest and longest struggle of the session. 'Desperate contests,' as Jefferson records, 'continued almost daily from the eleventh of October to the fifth of December.' He desired to sweep away the whole system of restraint and monopoly, and establish perfect liberty of conscience and opinion, by a simple enactment of half a dozen lines:

Jefferson desired to establish absolute liberty at once.

No compulsion in matters of religion.

None to suffer on account of religious belief.

All to have equal privileges.

"'No man shall be compelled to frequent or support any religious worship, ministry, or place whatsoever; nor shall be enforced, restrained, molested, or burdened in his body or goods; nor shall otherwise suffer on account of his religious opinions or belief: but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in nowise diminish, enlarge, or affect their civil capacities.'

Nine years required to effect the passage of the act.

"It required more than nine years of effort on the part of Jefferson, Madison, and their liberal friends, to bring Virginia to accept this solution of the religious problem, in its simplicity and completeness." Parton's "Life of Jefferson," page 210.

tions, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy Author of our religion,[1] who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up

Temporal burdens tend to beget hypocrisy.

Religion not to be propagated by coercion.

Some legislators assume dominion over the faith of others.

[1] Illustrative of the spirit of liberty during the Revolutionary period and definitive of the meaning of the term "religion" in our early documents, we insert the following comments of Jefferson on the adoption of this part of the preamble, as found in his "Autobiography:"

"The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that *its protection of opinion was meant to be universal.* Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed, by inserting the word "Jesus Christ," so that it should read, "a departure from the plan of Jesus Christ, the holy Author of our religion;" *the insertion was rejected by a great majority*, in proof that they meant to comprehend within the mantle of its protection *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.*" See "Works of Thomas Jefferson," volume i, page 45.

Liberality of the bill.

Its protection meant to be universal.

Religion meant to comprehend all — believers or unbelievers of the Bible.

Jefferson continued his efforts to rid the statute books of all religious laws, and the work that he had not the time to do was carried on by his young friend and co-worker the gallant young colonel, Richard M. Johnson of Kentucky, who subsequently proved himself to be one of the ablest champions of the anti-Sunday law cause. When the reformers who were trying to free the slaves were being cast into prison by means of these laws, Colonel Johnson was weakening the power of the Sunday statutes by his public work. There have been few other men who have done so much to call the attention of the public to the real character of Sunday laws as did Senator, Representative, and Vice-president Johnson. His words and his work have not only had an influence on the course of legislation in this country but they have been adopted into the common-law decisions of the judges. Like Washington's maxim, "The government of the United States is not, in any sense, founded on the Christian religion," Johnson's declaration in reference to Sunday laws that "our constitution recognizes no other power than that of persuasion for enforcing religious observances," will stand as long as the common law itself stands.

Jefferson's successor.

Washington's maxim.

Some endeavor to impose their opinions on others.

their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, hath established and maintained false religions over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagations of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporal rewards, which proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors for the instruction of mankind; that our civil rights have no dependence on our religious opinions, more than our opinions in physics or geometry; that, therefore, the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to the offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which in common with his fellow-citizens he has a natural right; that it tends also to corrupt the principles of that very religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emoluments, those who will externally profess and conform to it; that though indeed these are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles, on the supposition of their ill tendency, is a dangerous fallacy,

Compulsion in furnishing money for the propagation of opinions, tyrannical.

Even forcing one to support teachers of his own belief, deprives him of rightful liberty.

Civil rights have no dependence on religious opinions.

Any civil incapacitation on account of religion is a deprivation of natural right.

It also corrupts the religion it is meant to encourage.

The intrusion of civil power into the field of opinion destroys religious liberty.

which at once destroys all religious liberty, because he being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere when principles break out into overt actions against peace and good order; and, finally, that truth is great, and will prevail if left to herself, that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them.

Time enough to interfere when principles break out into overt actions.

Truth will prevail against error if left to herself.

Be it therefore enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

No man shall be molested or burdened in body or goods on account of religious belief.

All men shall be free to maintain their opinions in matters of religion.

And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding Assemblies, constituted with the powers equal to our own, and that therefore to declare this act irrevocable, would be of no effect in law, yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present or to narrow its operation, such act will be an infringement of natural right.

These rights the natural rights of mankind.

Any act to the contrary an infringement of natural right.

July 13, 1787.

AN ORDINANCE

FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORTHWEST OF THE RIVER OHIO.[1]

ADOPTED IN THE CONTINENTAL CONGRESS, JULY 13, 1787.

ARTICLE I.

No orderly person shall ever be molested on account of his worship.

No person demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

. . . . . .

ARTICLE III.

Religion, morality, and knowledge being necessary, education shall forever be encouraged.

Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.[2]

. . . . . .

Adoption of ordinance.

[1] "While the Constitutional Convention was in session at Philadelphia, the Continental Congress, sitting under the Articles of Confederation, passed an ordinance July 13, 1787, 'for the government of the territory of the United States northwest of the river Ohio.' This territory was ceded by Virginia to the United States, and embraced the present States of Ohio, Indiana, Illinois, Michigan, and Wisconsin. The same ordinance was afterwards extended to Tennessee, Alabama, and Mississippi. This ordinance provides for full religious liberty on the one hand, and for the cultivation of religion, morality, and education, as essential conditions of national prosperity." Schaff's "Church and State in the United States" (Ed. 1888), page 119. The articles above were among those which were to "forever remain unalterable." See "Charters and Constitutions of the United States," volume ii, page 431.

Articles to forever remain unalterable.

Erroneous views.

[2] It is maintained that the word "religion" in this article has reference specifically to the "Christian religion," and that provision is here made for the teaching of "Christian principles" in the public schools. No such idea, however, is contained in the article. The word "religion" as used in our early state documents, was a generic term, and had reference to all systems of belief in a superior power. A similar question arose about a year previous to the adoption of this ordinance, in the

very Assembly that ceded this territory to the United States — the General Assembly of the State of Virginia. And in reporting this, Jefferson says: "Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed by inserting the word 'Jesus Christ,' so that it should read, 'a departure from the plan of Jesus Christ, the holy Author of our religion;' *the insertion was rejected by a great majority*, in proof that they meant to comprehend, within the mantle of its protection, *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.*" "Works of Thomas Jefferson," volume i, page 45.

Declaration of the General Assembly of Virginia.

Religion meant to comprehend all — believers or unbelievers of the Bible.

On the provision in question, which was afterwards incorporated in the Constitution of the State of Ohio, the Supreme Court says as follows: "If, by this generic word 'religion,' was really meant 'the Christian religion,' or 'Bible religion,' why was it not plainly so written? Surely the subject was of importance enough to justify the pains, and surely it was of interest enough to exclude the supposition that it was written in haste, or thoughtlessly slurred over. At the time of adopting our present Constitution, this word 'religion' had had a place in our old Constitution for half a century, which was surely ample time for studying its meaning and effect, in order to make the necessary correction or alteration, so as to render its true meaning definite and certain. The same word 'religion,' and in much the same connection, is found in the Constitution of the United States. The latter Constitution, at least, if not our own also, in a sense, speaks to *mankind*, and speaks of the rights of *man*. Neither the word 'Christianity,' 'Christian,' nor 'Bible,' is to be found in either. When they speak of 'religion,' they must mean the religion of man, and not the religion of any *class* of men. When they speak of 'all men' having certain rights, they cannot mean merely 'all Christian men.' Some of the very men who helped to frame these Constitutions were themselves not Christian men. . . .

Decision of the Ohio Supreme Court.

Meaning of the word "religion."

"The declaration is, not that government is essential to good religion, but that religion is essential to good government. Both propositions are true, but they are true in quite different senses. Good government is essential to religion for the purpose declared elsewhere in the same section of the Constitution, namely, for the purpose of mere *protection*. But religion, morality, and knowledge are essential to government, in the sense that they have the instrumentalities for *producing and perfecting* a good form of government. On the other hand, no government is at all adapted for producing, perfecting, or propagating a good religion. Religion, in its widest and best sense, has most, if not all, the instrumentalities for producing the best form of government. Religion is the parent, and not the offspring, of good government. Its kingdom is to be *first* sought, and good government is one of those things which will be added thereto. True religion is the sun which gives to government all its true lights, while the latter merely acts upon religion by reflection.

Government essential to religion only to protect it.

No government adapted to propagate good religion.

State religion is some individual's religion.

"Properly speaking, there is no such thing as 'religion of state.' What we mean by that phrase is, the religion of some individual, or set of individuals, taught and enforced by the state. The state can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person or class of persons.

Whose religion shall the state adopt?

If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all?

To what extent will it go?

And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies 'beyond the scope of sense and reason'—what, from its very nature, can only be the object of *faith*—that we encounter these difficulties."

And the counsel (among them Hon. Stanley Matthews and Hon. George Hoadley) for the Cincinnati Board of Education under the Ohio Constitution containing the above provision, in their argument to the Supreme Court in this case, said:

Religious instruction violative of Ohio's Constitution.

"The State is, in Ohio, forbidden to interfere with, or exercise the office of, the church. 'Religious instruction and the reading of religious books, including the Holy Bible,' cannot be prosecuted in schools supported by the taxation of men of all religious opinions, without the violation of section 7, article 1, and section 2, article 6, of the Constitution.

Christianity not a part of Ohio's common law.

"Neither Christianity nor any other system of religion is a part of the law of this State. Bloom *v.* Richards, 2 Ohio State, 387; Thurman, Justice, in Mc Gatrick *v.* Wason, 4 Ohio State, 571; article 11 of the treaty with Tripoli, concluded by the administration of George Washington, November 4, 1796, 8 United States Statutes at Large, 155."

Duty of the government to religion.

It is the duty of the state to "encourage" religion *by giving every individual of whatever belief a full and impartial protection in the promulgation and exercise of his belief.* As this has been the general policy of this government, we have as a result, better government and a better morality than any other nation. The encouragement of religion is an incident in insuring civil liberty, of which religious liberty and free thought are the most important branches.

Encouragement given by our government to religion.

Religion in general has been encouraged to such an extent that America has been termed the "home of the persecuted;" for here the Jew or Mahometan has equal rights—even though through the inefficiency or prejudice of the internal police they may not always be protected as they should be—with the highest professor of Christianity in the land. The teaching of Christianity constitutionally has no right in our public schools, or in any of our public institutions.

A BIT OF HISTORY.

The following, published in the Indianapolis "News" of February 1, 1893, gives, in condensed form, the history of the struggle for religious liberty which resulted in the establishment of the government of the United States upon the principle of religious freedom, or that of the separation of church and state:

"On June 12, 1776, a convention of the Colonial House of Burgesses, of Virginia, adopted a declaration of rights, composed of sixteen sections, every one of which, in substance, afterward found a place in the Declaration of Independence, and in the national Constitution. This was followed July 4 by the Declaration of Independence, written by Thomas Jefferson, of Virginia. The Declaration of Independence had no sooner been published abroad than the Presbytery of Hanover, in Virginia, at its first meeting, openly took its stand in the recognition of the new and independent nation, and addressed to the Virginia House of Assembly a memorial for the separation of the church and state. The Presbytery of Hanover was immediately joined by the Baptists and the Quakers, who sent up petitions to the same purpose. The Episcopalian Church was the established church of Virginia, and had been ever since the planting of the colony. The Episcopalians and the Methodists sent up counter memorials, pleading for a continuance of the system of established religion. Two members of the Assembly, Messrs. Pendelton and Nicolas, championed the establishment, and Jefferson, as ever, espoused the cause of liberty and right. After nearly two months of what Jefferson pronounced the severest contest in which he ever engaged, the cause of freedom prevailed, and December 6, 1776, the Assembly passed a law repealing all colonial laws and penalties prejudicial to dissenters, releasing them from any further compulsory contributions to the Episcopal Church, and discontinuing the State support of the Episcopal clergy after January 1, 1777. A motion was made to levy a general tax for the support of all denominations, but it was postponed till a future Assembly. To the next Assembly petitions were sent strongly pleading for the general assessment. But the Presbytery of Hanover, still supported by the Baptists and Quakers, was again on hand with a memorial, in which it referred to the points previously presented. In 1779 they defeated the bill, but at the first Assembly after the close of the war, in 1784, it was brought up again, this time with Patrick Henry as its leading advocate. It was entitled 'A Bill Establishing a Provision for Teachers of the Christian Religion.' James Madison stood with Jefferson. As the bill was about to pass, these two succeeded in carrying a motion to postpone it till the next session, but in the meantime, to have it printed and generally circulated. As soon as this had been accomplished, Madison wrote, also for general circulation and signature, a

The struggle for religious liberty in brief.

A severe conflict.

memorial and remonstrance to be presented to the next Assembly, in opposition to the bill. This remonstrance was so generally signed that the bill for a general assessment was not only defeated, but in its place there was passed December 26, 1785, 'An Act for Establishing Religious Freedom,' written by Thomas Jefferson.

Final victory in 1785.

"Now, during this very time, plans were being laid for the formation of a federal government for the American Union, to take the place of the helpless confederation of States, and it is not too much to say that to James Madison, more than to any other single person, except, perhaps, George Washington, is due the credit of bringing it all to a happy issue. These contests in Virginia, by which had been severed the illicit and corrupting connection between the church and the state, had awakened the public mind, and prepared the way for the formation of a Constitution which would pledge the nation to a complete separation from all connection with religion in any way. Accordingly the Constitution, as originally proposed by the convention, declared on this point that 'No religious test shall ever be required as a qualification to any office or public trust under the United States.'"

The principles wrought out in Virginia engrafted into the National Constitution.

The struggle for religious liberty fought out in Virginia during the time of the Revolutionary War, and brought to so successful an issue, with the ultimate result of placing the stamp of religious liberty upon the national government itself, is as much a part of the history of the United States as is that of the war itself, and should be in every history of the United States. The struggle with Great Britain for civil liberty afforded an opportune time for the struggle for religious liberty. The friends and supporters of the religious establishment in Virginia desired civil liberty, or independence from the political yoke of a foreign power. To secure this, they needed the aid of the dissenters whom they had persecuted and oppressed under their religious establishment. The dissenters, conscious of the situation, by their protests virtually said, If you wish us to help you gain your civil liberty, you ought to grant to us our religious liberty.

Struggle for religious liberty a part of national history.

An opportune time for the struggle.

In some respects this struggle for religious freedom carried on during the Revolutionary War, may be said to have been more important even, and more far-reaching in its results, than the war itself; for to the principles of religious liberty here established, more than to its national independence and its stand for civil liberty, have been due the real greatness and influence of this nation in the world. A new nation with the old religious despotism still clinging to it, would have been no great addition to the world's assets; but a nation founded upon the true principles of both civil and religious liberty, was something worth while.

Importance of the issue.

A nation worth while.

PART III.

National Period.

A STATE.

What constitutes a state?
Not high raised battlements or labored mound,
Thick walls or moated gate;
Not cities proud, with spires and turrets crowned,
Nor bays and broad arm ports,
Where, laughing at the storm, rich navies ride;
Nor starred and spangled courts,
Where low-browed baseness wafts perfume to pride —
No! — men, high-minded men,
With powers as far above dull brutes endued,
In forest, brake, or den,
As beasts excel cold rocks and brambles rude,—
Men, who their duties know,
But know their rights; and, knowing, dare maintain,
Prevent the long-aimed blow,
And crush the tyrant, while they rend the chain,—
These constitute a state.

— *Sir William Jones.*

THE CONSTITUTION OF THE UNITED STATES.[1]

ADOPTED IN THE CONSTITUTIONAL CONVENTION, SEPTEMBER 17, 1787.

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

. . . . . .

No religious test ever to be required.

No religious test shall ever be required as a qualification to any office or public trust under the United States.[2]

[1] "United States Statutes at Large," volume i, page 10.

JUSTICE STORY ON CHURCH AND STATE.

[2] Justice Joseph Story in his Commentaries on the "Constitution of the United States," page 690 *et seq.*, says:

Object of the clause.

"This clause is not introduced merely for the purpose of satisfying the scruples of many respectable persons who feel an invincible repugnance to any religious test or affirmation. It had a higher object: to cut off forever every pretense of any alliance between church and state in the national government. The framers of the Constitution were fully sensible of the dangers from this source, marked out in the history of other ages and countries, and not wholly unknown to our own. They knew that bigotry was unceasingly vigilant in its stratagems to secure to itself an exclusive ascendancy over the human mind, and that intolerance was ever ready to arm itself with all the terrors of the civil power to exterminate those who doubted its dogmas or resisted its infallibility. The Catholic and Protestant had alternately waged the most ferocious and unrelenting warfare on each other, and Protestantism, at the very moment when it was proclaiming the right of private judgment, prescribed boundaries to that right, beyond which if any one dared to pass, he must seal his rashness with the blood of martyrdom. The history of the parent country, too, could not fail to instruct them in the uses and the abuses of religious tests. They there

All alliance with religion to be forever severed.

Tactics of both Catholic and Protestant.

found the pains and penalties of non-conformity written in no equivocal language, and enforced with a stern and vindictive jealousy."

BANCROFT ON THE CONSTITUTION.

Bancroft, in his "History of the United States," volume vi, pages 443, 444 (edition 1888), dealing with "the formation of the Constitution of the United States," says:

Constitution guards equality and individuality.

"The Constitution establishes nothing that interferes with equality and individuality. It knows nothing of differences by descent, or opinions, of favored classes, or legalized religion, or the political power of property. It leaves the individual alongside of the individual. No nationality of character could take form, except on the principle of individuality, so that the mind might be free, and every faculty have the unlimited opportunity for its development and culture. . . .

"The rule of individuality was extended as never before. . . . Religion was become avowedly the attribute of man and not of a corporation. In the earliest states known to history, government and religion were one and indivisible. Each state had its special deity, and of these protectors one after another might be overthrown in battle, never to rise again. The Peloponnesian war grew out of a strife about an oracle. Rome, as it adopted into citizenship those whom it vanquished, sometimes introduced, and with good logic for that day, the worship of their gods. No one thought of vindicating liberty of religion for the conscience of the individual till a voice in Judea, breaking day for the greatest epoch in the life of humanity by establishing for all mankind a pure, spiritual, and universal religion, enjoined to render to Cæsar only that which is Cæsar's. The rule was upheld during the infancy of this gospel for all men. No sooner was the religion of freedom adopted by the chief of the Roman empire, than it was shorn of its character of universality and enthralled by an unholy connection with the unholy state; and so it continued till the new nation — the least defiled with the barren scoffings of the eighteenth century, the most sincere believer in Christianity of any people of that age, the chief heir of the Reformation in its purest form — when it came to establish a government for the United States, refused to treat faith as a matter to be regulated by a corporate body, or having a headship in a monarch or a state.

Christ the Author of liberty in religion for individual.

America the first nation to adopt the principle laid down by Christ.

"Vindicating the right of individuality even in religion, and in religion above all, the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained in Judea. It left the management of temporal things to the temporal power; but the American Constitution, in harmony with the people of the several States, withheld from the federal government the power to invade the home of reason, the citadel of conscience, the sanctuary of

That truth might be free, the Constitution withheld power to legislate in matters of conscience.

the soul; and not from indifference, but that the infinite spirit of eternal truth might move in its freedom and purity and power."

See Macaulay on "the ends of government" and "the Puritan Parliament," in his essays on Gladstone and Leigh Hunt.

NO BILL OF RIGHTS

Speaking of the United States Constitution, William E. Gladstone, the noted English statesman, said:

Gladstone's tribute to the Constitution.

"The American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man."

Notwithstanding its many excellencies, it does not, however, contain, as do the State Constitutions, any formal declaration or bill of rights, except as the amendments may be called such. Not a few friends at the time of its formation, noted this deficiency, and urged that it be supplied. In a letter to James Madison, written from Paris in 1787, Thomas Jefferson, after noting the many features in it which he liked, said:

Has no bill of rights.

"I will now add what I do not like. First, the omission of a bill of rights providing clearly and without the aid of sophisms for freedom of religion, freedom of the press, protection against standing armies, restriction against monopolies, the eternal and unremitting force of the *habeas corpus* laws, and trials by jury in all matters of fact triable by the laws of the land and not by the laws of the nation. . . . A bill of rights is what the people are entitled to against every government on earth." "Thomas Jefferson, His Life and Writings," by S. E. Forman (1900), page 169.

Jefferson pointed out the omission.

In another letter, addressed to Stephens Smith, written from Paris in 1788, he further said:

"I am glad to learn that the new Constitution will undoubtedly be received by a sufficiency of the States to set it a going. Were I in America, I would advocate it warmly till nine should have adopted it, and then as warmly take the other side to convince the remaining four that they ought not to come into it until the declaration of rights is annexed to it. By this means we should secure all the good of it and procure so respectable an opposition as would induce the accepting States to offer a bill of rights." *Ibid.*, page 170.

In his "Essentials in American History," page 214 (edition 1905), Albert Bushnell Hart, of Harvard University, says:

"The fight raged over the Constitution from end to end; in general, in particular, and in detail, it was hotly assailed and strongly defended. . . . The point most criticized was the lack of a bill of rights. The convention had assumed that individual rights were fundamental and could not be taken away by a federation; but the State Constitutions all had such bills of rights, and it was a mistake not to include one in the new instrument of government."

Point most criticized — lack of bill of rights.

COMMENTS ON THE CONSTITUTION.

VIRGINIA CONVENTION.

The government has not a shadow of right to intermeddle with religion.

MR. MADISON: . . . *There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation.* I can appeal to my uniform conduct on this subject, that I have warmly supported religious freedom. It is better that this security should be depended upon from the general legislature, than from one particular State. A particular State might concur in one religious project.[1]

. . . . . .

Liberty the direct end of government.

Should be guarded with jealousy.

Cause of England's prosperity.

MR. HENRY: Mr. Chairman. . . . You are not to inquire how your trade may be increased, nor how you are to become a great and powerful people, but how your liberties can be secured; for liberty ought to be the direct end of your government. . . . Liberty — the greatest of all earthly blessings — give us that precious jewel, and you may take everything else! . . . Guard with jealous attention the public liberty. . . . We are descended from a people whose government was founded on liberty: our glorious forefathers of Great Britain made liberty the foundation of everything. That country is become a great, mighty, and splendid nation; not because their government is strong and energetic, but, sir, because liberty is its direct end and foundation. We drew the spirit of liberty from our British ancestors: by that spirit we have triumphed over every difficulty. . . . The great and direct end

[1] Elliot's "Debates on the Federal Constitution," volume iii, page 330. There were few objections urged so strongly against the proposed Constitution as that it did not sufficiently insure religious liberty.

of government is liberty. Secure our liberty and privileges, and the end of government is answered. If this be not effectually done, government is an evil.[1] . . .

Without liberty government is an evil.

NORTH CAROLINA CONVENTION.

MR. CALDWELL thought that some danger might arise. He imagined it[2] might be objected to in a political as well as in a religious view. In the first place, he said, there was an invitation for Jews and pagans of every kind to come among us. . . . I think, then, added he, that, in a political view, those gentlemen who formed this Constitution should not have given this invitation to Jews and heathens.[3] . . .

Constitution an invitation to all to come among us.

MASSACHUSETTS CONVENTION.

REV. MR. BACKUS:[4] Mr. President, I have said very little to this honorable convention; but I now

Speech of the Rev. Mr. Backus.

[1] Elliot's "Debates on the Federal Constitution," volume iii, pages 43 *et seq.*, 53 *et seq.*, 651.

[2] Article six of the Federal Constitution, providing that no religious test shall ever be required as a qualification to any office or public trust under the United States.

[3] Elliot's "Debates on the Federal Constitution," volume iv, page 199. This speech of Mr. Caldwell shows in what light the Federal Constitution was regarded at the time of its adoption,—by its opponents as well as by its friends,—that it intended absolute equality, irrespective of religious belief or worship. This point was emphasized by the adoption of the first amendment to the Constitution. The idea that Christianity, or any other religion, was intended to be either favored or discountenanced, was entirely foreign to the intentions of the framers of our government. Such charges are the gratuitous inventions of the opponents of the absolute religious equality provided for by the Constitution — persons who desire to have *their* religious belief, Christianity, or its institutions, *forced upon others*. How different would be their tone if it was some other person's religion that was being attempted to be forced on them!

Intention of Constitution.

A difference in the person.

[4] Rev. Mr. Isaac Backus was the author of the "History of New England" (three volumes), published 1777–1796; and, as "Appleton's

Thoughts on religious tests.

beg leave to offer a few thoughts upon some points in the Constitution proposed to us, and I shall begin with the exclusion of any religious test. Many appear to be much concerned about it; but nothing is more evident, both in reason and the Holy Scriptures, than that religion is ever a matter between God and individuals; and, therefore, no man or men can impose any religious test without invading the essential prerogatives of our Lord Jesus Christ. Ministers

Christianity's first usurpation.

first assumed this power under the Christian name; and then Constantine approved of the practice, when he adopted the profession of Christianity as an engine of state policy. And let the history of all nations be searched from that day to this, and it will

Effect.

appear that the imposing of religious tests has been the greatest engine of tyranny in the world. And I rejoice to see so many gentlemen who are now giving in their rights of conscience in this great and important matter. Some serious minds discover a

A characteristic Protestant argument.

concern lest if all religious test should be excluded, the Congress would hereafter establish popery or some other tyrannical way of worship. But it is most certain that no such way of worship can be established without any religious test.[1] . . .

An earnest advocate of the utmost religious freedom.

Cyclopedia of American Biography" says, "Thoughout his life he was an *earnest and consistent advocate of the utmost religious freedom.*" He was one of the many early liberal ministers who worked heart and hand with the statesmen of the times to sever for the first time in the world's history the connection which had so long existed between religion and

Not a conflict between religion and irreligion.

the powers of earth. It was not a conflict between religion and irreligion, nor between Christianity and infidelity; but it was a conflict between free-churchism and state-churchism, between the liberty of the gospel and the superstition of heathenism, between human rights and the usurpations of ecclesiastics, and Dr. Backus and many other clergymen of the same stamp took the side of liberty, of humanity, and of the gospel of

Wisdom manifested.

Christ. And upward of a century of unexampled prosperity by both the state and the church attests to the wisdom of their course.

[1] Elliot's "Debates on the Federal Constitution," volume ii, pages 148, 149.

PROPOSED AMENDMENTS TO THE CONSTITUTION.

NEW YORK CONVENTION.

Sept. 17, 1787.

All equally entitled to the free exercise of religion.

Religious preferences wrong.

That the people have an equal, natural, and unalienable right freely and peaceably to exercise their religion according to the dictates of conscience; and that no religious sect or society ought to be favored or established by law in preference to others.[1]

. . . . . .

PENNSYLVANIA CONVENTION.

Dec. 12, 1787.

The right of conscience to be held inviolable.

The right of conscience shall be held inviolable, and neither the legislative, executive, nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the Constitutions of the several States, which provide for the preservation of liberty in matters of religion.[2]

. . . . . .

NEW HAMPSHIRE CONVENTION.

June 21, 1788.

. . . . . .

No laws touching religion.

Congress shall make no laws touching religion, or to infringe the rights of conscience.[3]

. . . . . .

[1] Elliot's "Debates on the Federal Constitution," volume i, page 328.

[2] In Pennsylvania, the minority of the convention issued an address entitled, "Reasons of Dissent," etc., in which several amendments were proposed, the first of which was the above. The "Reasons of Dissent" were published, Philadelphia, December 12, 1787, and reprinted in Carey's "American Museum," volume ii, number 5, pages 536–553; quoted by Schaff in "Church and State in the United States," page 31.

[3] Elliot's "Debates on the Federal Constitution," volume i, page 326.

June 27, 1788.

VIRGINIA CONVENTION.

Natural rights inalienable.

That there are certain natural rights, of which men, when they form a social compact, cannot deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring, possessing, and protecting property, and pursuing and obtaining happiness and safety.

All power vested in the people.

That all power is naturally invested in, and consequently derived from, the people; that magistrates are therefore their *trustees* and *agents*, at all times amenable to them.

Magistrates their trustees.

Religion can be directed only by reason, not by force.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience, and

Religious preferences wrong.

that no particular religious sect or society ought to be favored or established by law in preference to others.[1]

. . . . . .

Aug. 1, 1788.

NORTH CAROLINA CONVENTION.

. . . . . .

Religion can be directed only by reason, not by force.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men have an equal, natural, and unalienable right to the free exercise of religion, according to the dictates of conscience; and

Religious preferences wrong.

that no particular religious sect or society ought to be favored or established by law in preference to others.[2]

. . . . . .

[1] Elliot's "Debates on the Federal Constitution," volume iii, page 659.

[2] Elliot's "Debates on the Federal Constitution," volume iv, pages 242, 244. This amendment was among twenty others proposed in

RHODE ISLAND CONVENTION.

May 29, 1790

. . . . . .

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and, therefore, all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established by law in preference to others.[1]

Religion can be directed only by reason, not by force.

Religious preferences wrong.

. . . . . .

the Convention of North Carolina as a "Declaration of Rights," the wording being substantially the same as the one proposed by Virginia.

[1] Elliot's "Debates on the Federal Constitution," volume i, page 334.

GENERAL NOTE.

From these proposed amendments to the Constitution of the United States, made by the States before the adoption of the Constitution in 1789, it is evident that there was a general and widespread desire on the part of the people that the national government at least should have nothing to do with religion — should have no established religion; — that in this, church and state should be entirely and forever separate. John Adams gave expression to this sentiment when he said, "I hope Congress will never meddle with religion further than to say their own prayers." "Life and Works of John Adams," volume ix, page 402. Many, it would seem, were ready to cast aside the religious establishments in the States. In fact, Virginia had already done so. But, so far as appears, there was no proposition at this time that the national Constitution should forbid the States having religious establishments or from making laws restricting religious freedom. This proposition came later — in 1875 — when Hon. James G. Blaine, of Maine, introduced in Congress a proposed amendment looking toward the extension of the principle set forth in the first amendment, to the States. See page 349. If the principle of the separation of church and state is proper for the national government, there can be no good reason why it should not be made to apply to the States as well. In their Constitutions the States have quite generally adopted the principle; but, with the exception of California, they have all strangely clung to the assumed right to regulate Sunday observance by law, which directly contravenes the principle. In this the taproot of state-churchism still remains.

A general sentiment.

Virginia had already set the example.

Principle adopted by States except in matter of Sunday laws.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;[1] or abridging the freedom of speech or of

[1] REASON FOR THE FIRST AMENDMENT.

Liberty of conscience not sufficiently secured.

When the Constitution first made its appearance, the friends of religious liberty, especially those who had been oppressed under the religious establishments of the colonies, felt that liberty of conscience was not sufficiently secured in it. Article 6 forbade religious tests as a qualification for office under the government, but there was no guarantee against religious tests and religious intolerance to those not in office. August 8, 1789, the United Baptist Churches of Virginia addressed a communication to George Washington, in which they gave expression to the prevailing fears in this regard. Replying, Washington said:

Baptists write Washington.

"If I could have entertained the slightest apprehension that the Constitution framed by the convention where I had the honor to preside might possibly endanger the religious rights of any ecclesiastical society, certainly I would never have placed my signature to it; and if I could now conceive that the general government might ever be so administered as to render the liberty of conscience insecure, I beg you will be persuaded that no one would be more zealous than myself to establish effectual barriers against the horrors of spiritual tyranny and every species of religious persecution. For, you doubtless remember, I have often expressed my sentiments that any man, conducting himself as a good citizen and being accountable to God alone for his religious opinions, ought to be protected in worshiping the Deity according to the dictates of his own conscience." "History of the Baptists," by Thomas Armitage, D. D., pages 806, 807.

Washington's reply.

First ten amendments.

A month later, Madison, with the approval of Washington, introduced in the first Congress that met under the new Constitution, the first ten amendments, commonly known as the Bill of Rights, the first of which enjoins Congress from all religious legislation. These were approved by Congress September 23, 1789, and ratified by ten of the States — all of the thirteen original States excepting Massachusetts, Connecticut, and Georgia — within the next two years. There is no evidence on the journals of Congress that the legislatures of the three States named ratified them.

the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

. . . . . .

The Ralston (Pa.) "Herald" of April 28, 1910, commenting on the reason for the first amendment says:

Reason for first amendment.

"We wonder how many of our readers have read the history of New England's colonial times? of the persecutions, the whipping of the Baptists and Quakers, and the banishing of Roger Williams, by the Puritans? The Puritans were not worse than other people; in fact, they were honest, hard-working people. You ask, Then how could they persecute inoffensive people? — Simply because they were following wrong principles in government. They failed to make any separation between the church and the state. They thought that the stability of the state depended on the people's observing certain religious forms; and as the Baptists and Quakers would not conform to the religio-political order of government, they were punished, or rather persecuted. It was to prevent a repetition of such persecutions that the first amendment to the Constitution was added. Did our forefathers make a mistake in separating the church and the state? If not, let us keep them separate. Liberty — both religious and civil — is safe only so long as the people understand the principles on which it is based."

Lessons from Old World history.

As guides to help them in establishing, not religion by law, but, as Washington expressed it, "effectual barriers against the horrors of spiritual tyranny and every species of religious persecution," the founders of the national government had before them the evil results of the union of church and state and its consequent usurpation of the divine prerogative by man, both in this country and in the Old World. The prohibitions in article 6 and the first amendment were the result.

MEANING OF THE WORD "RELIGION."

Meaning of "religion."

Chief Justice Waite, who delivered the opinion of the Supreme Court in the United States, in the case of Reynolds *vs.* United States, in 1878, said: "The word 'religion' is not defined in the Constitution. We must go elsewhere, therefore, to ascertain its meaning, and nowhere more appropriately, we think, than to the history of the times in the midst of which the provision was adopted." This, most certainly, is the only way in which we can obtain the correct meaning of the word. And as the subject was a live question when the Federal Constitution was adopted, the documents of the times furnish us an accurate idea of the meaning intended by the use of the word "religion."

In the Virginia "Declaration of Rights," adopted June 12, 1776, it is incidentally defined in the sixteenth section:

It is the duty that we owe to our Creator.

"That religion, *or the duty which we owe to our Creator, and the manner of discharging it,* can be directed only by reason and conviction, not by force or violence; and, therefore, *all men* are *equally* entitled to the *free exercise of religion, according to the dictates of conscience;* and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other."

"Religion" intended to include all systems of belief.

Identically the same definition was given to the word in the proposed amendments guaranteeing religious rights in the Federal Constitution, by the State conventions of Virginia, North Carolina, and Rhode Island. In the Virginia "Memorial and Remonstrance," written by Madison, it was distinctly stated that they meant religious equality to extend to *all beliefs* — not alone to sects of the Christian religion. This said: "Who does not see that the same authority which can establish Christianity in exclusion of all other religions, may establish with the same ease, any particular sect of Christians, in exclusion of all other sects?" And yet religious partisans resort to all kinds of subterfuges in their attempts to make it appear in some way or other that the Christian religion is a part of our common law, its institutions are entitled to especial regard by the government, etc., *ad infinitum.* Madison emphasized the idea of absolute religious equality for all in the religious amendment which he originally proposed, among nine others, to incorporate in the body of the Constitution, instead of in separate articles as they were finally adopted. His proposed amendment was as follows: —

Subterfuges of religious partisans.

Madison emphasizes his idea of absolute religious liberty.

No national religion to be established.

"Fourthly, That in article first, section nine, between clauses three and four, be inserted these clauses, to wit: *The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.*" "Annals of Congress," page 434.

"Religion" a generic term.

From the above quotation it will be seen that the word "religion" was used in its broadest sense. And, as Schaff says: "This is much more than freedom of religious *opinions;* for this exists everywhere, even under the most despotic governments, and is beyond the reach of law, which deals only with overt actions. Freedom of exercise includes public worship, acts of discipline, *and every legitimate manifestation of religion.*" "Church and State in the United States," page 35. The framers of our government intended to separate absolutely and forever all connection between civil government and religion; but as years roll by, and the spirit of liberty that was so prominent a characteristic of the American people then, fades from the American mind, we see a revival of the demands for Sunday laws and their

Complete separation of religion and state intended.

enforcement, and calls for the recognition of the Christian religion in our public documents. But as long as the integrity of the Federal Constitution is preserved, no such laws can be enacted by the government of the United States of America. And any right that an individual has as a citizen of the United States, no State is allowed to abridge; for, according to the fourteenth amendment, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Religious laws inconsistent with the Constitution.

THE RIGHT OF FREE SPEECH.

Says our American poet, James Russell Lowell:

"I honor the man who is ready to sink
Half his present repute for the freedom to think,
And when he has thought, be his cause strong or weak,
Will risk t'other half for the freedom to speak,
Caring not for what vengeance the mob has in store,
Let that mob be the upper ten thousand or lower."

Censorship over the right to the freedom of speech is virtually a censorship over thought, for speech is but the expression of thought. Such a censorship implies the right of one man's mind to control the operations and expressions of another man's mind. Common as this abridgment of a natural right has been in other countries, it is not an American doctrine. The doctrine here, and especially in religious matters, as expressed by Jefferson, is that "all men shall be free *to profess, and by argument to maintain,* their opinions in matters of religion." See page 135.

What censorship of free speech implies.

Not an American doctrine.

Herbert Spencer, commenting on the right of free speech, says:

"The utterance of thought being one species of action, there arises from the proposition that every man is free within specified bounds to do what he wills, the self-evident corollary, that, with the like qualification, he is free to *say* what he wills; or, in other words, as the rights of his fellow-men form the only legitimate restraint upon his deeds, so, likewise, do they form the only legitimate restraint upon his words.

Man has the right to say what he wills.

"There are two modes in which speech may exceed the ordained limits. It may be used for the propagation of slander, which, as we have seen in a foregoing chapter, involves a disregard of moral obligation; or it may be used in inciting and directing another to injure a third party. In this last case, the instigator, although not personally concerned in the trespass proposed by him, must be considered as having virtually committed it. We should not exonerate an assassin who pretended that his dagger was guilty of the murder laid to his charge,

Limitations on speech.

Sept. 25, 1789.

ARTICLE IX.

Other rights of the people.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.[1]

. . . . . .

Incitation to crime is criminal.

The inciter equally guilty with incited.

rather than himself. We should reply, that the having moved a dagger with the intention of taking away life, constituted his crime. Following up the idea, we must also assert that he who, by bribes or persuasion, moved the man who moved the dagger, is equally guilty with his agent. He had just the same intention, and similarly used means for its fulfilment; the only difference being that he produced death through a more complicated mechanism. As, however, no one will argue that the interposing of an additional lever between a motive force and its ultimate effect, alters the relationship between the two, so neither can it be said that he who gets a wrong done by proxy, is less guilty than if he had done it himself. Hence, whoso suggests or urges the infraction of another's rights, must be held to have transgressed the law of equal freedom.

Extent of the liberty of speech.

"Liberty of speech, then, like liberty of action, may be claimed by each, to the fullest extent compatible with the equal rights of all. Exceeding the limits thus arising, it becomes immoral. Within them, no restraint of it is permissible." "Social Statics," chapter 14, section 1.

[1] In his philosophical argument upon the self-evidence of inherent natural rights, Herbert Spencer says:

Instinct of personal rights.

"There exists in man what may be termed an *instinct of personal rights* — a feeling that leads him to claim as great a share of natural privilege as is claimed by others — a feeling that leads him to repel anything like an encroachment upon what he thinks his sphere of original freedom. By virtue of this impulse, individuals, as units of the social mass, tend to assume like relationships with the atoms of matter, surrounded as these are by their respective atmospheres of *repulsion* as well as of attraction. And perhaps social stability may ultimately be seen to depend upon the due balance of these forces.

Effect of this instinct.

Idea of personal rights treated with contempt.

"There exists, however, a dominant sect of so-called philosophical politicians, who treat with contempt this belief that men have any claims antecedent to those indorsed by governments. As disciples of Bentham, consistency requires them to do this. Accordingly, although it does violence to their secret perceptions, they boldly deny the existence of 'rights' entirely. They nevertheless perpetually betray a belief in the doctrines which they professedly reject. They inadvertently talk about *justice*, especially when it concerns themselves, in much the same style as their opponents. They draw the same distinction between *law* and *equity* that other people do. They applaud *fairness* and *honor*,

Belief in the doctrine perpetually betrayed.

ARTICLE XIV. June 16, 1866.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State in which they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;* nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

No State to abridge rights of national citizens.

quite as if they thought them something more than mere words. And when robbed, or assaulted, or wrongly imprisoned, they exhibit the same indignation, the same determination to oppose the aggressor, utter the same denunciations of tyranny, and the same loud demands for redress, as the sternest assertors of the rights of man. By way of explaining such inconsistencies, it is indeed alleged, that the feeling thus manifested is nothing but the result of a gradually-acquired conviction that benefits flow from some kinds of action, and evils from other kinds; and it is said that the sympathies and antipathies respectively contracted toward these, exhibit themselves as a love of justice, and a hatred of injustice. To which supposition it was by implication elsewhere replied, that it would be equally wise to conclude that hunger springs from a conviction of the benefit of eating; or that love of offspring is the result of a wish to maintain the species!

When they are wronged, they assert their rights.

"But it is amusing when, after all, it turns out that the ground on which these philosophers have taken their stand, and from which with such self-complacency they shower their sarcasms, is nothing but an adversary's mine, destined to blow the vast fabric of conclusions they have based on it into nonentity. This so solid-looking principle of 'the greatest happiness to the greatest number,' needs but to have a light brought near it, and lo! it explodes into the astounding assertion, that all men have equal rights to happiness — an assertion far more sweeping and revolutionary than any of those which are assailed with so much scorn.

Ludicrousness of the position of these philosophers.

"When we see, then, that an instinct of personal rights manifests itself unceasingly in opinions and institutions; when further we find that the attempt to trace the monitions of this instinct to experience, betrays us into an absurdity; and when, lastly, the dogma of those who most sturdily deny that there is such an instinct, proves to be only another emanation from it, we find ourselves in possession of the strongest possible evidence of its existence — the testimony of all parties. We are therefore justified in considering that existence as sufficiently proved." "Social Statics," chapter 3, sections 2, 3.

Conclusion of the argument.

MADISON'S VIEWS OF PROPERTY.[1]

WRITTEN IN 1792.

Extent of property rights.

In its larger and juster meaning, it [property] embraces everything to which a man may attach a value and have a right, and *which leaves to every one else the like advantage.*[2] . . .

Property rights in our time.

[1] Property, in its most general sense, is the right to the use or enjoyment of anything. We have a property in our time; that is, each person's time is as much his as is his house or his clothes or his money. Hence, government has no more right to dictate to an individual how he shall use his time than it has to dictate to him how he shall use his money; and it has no more right to deprive him of the free use of his time than it has to deprive him of his clothes or of the free use of his money. Each individual, in actions that concern only himself, is rightfully absolute sovereign, governed only by natural laws. All restraints in such matters by government are clearly a usurpation of power, and are entirely without its rightful jurisdiction.

Doctrine of equality of rights.

[2] This is one of the several places where Madison states the doctrine of full liberty for each, limited only by equal liberty for all; and we believe that he was among the first to emphasize this limitation of the power of legislatures as a rule of political as well as of social conduct. Kant stated it in a modified form about the same time to the German schools, and Herbert Spencer, fifty years afterward, made it the foundation formula of his "Social Statics," the work which shadowed forth his more mature and complete "Principles of Morality." But

Spencer's deduction.

Spencer evidently deduced the formula entirely independent of both German and American writers, for in Appendix A, to his work on "Justice: the Ethics of Social Life," he says: "The fundamental principle enunciated in the chapter entitled, 'The Formula of Justice' [that 'every man is free to do that which he wills, provided that he infringes not the equal freedom of any other man'] is one which I set forth in 'Social Statics: the Conditions Essential to Human Happiness Specified and the first of them Developed,' originally published at the close of 1850. I then supposed that I was the first to recognize the law of equal freedom as being that in which justice, as variously exemplified in the concrete, is summed up in the abstract; and I continued to suppose this for more

Kant's rule of ethics.

than thirty years." Kant's statement of equality as a rule of right is that "every action is right which in itself, or in the maxim on which it proceeds, is such that it can coexist along with the freedom of the will of each and all in action, according to a universal law."

Right to religious opinions.

He has a property of peculiar value in his religious opinions, *and in the profession and practice dictated by them.* . . . In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights. . . .

Province of just government.

Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government which *impartially* secures to every man whatever is his own.

Governments must protect all rights.

According to this standard of merit, the praise of affording a just security to property should be sparingly bestowed on a government which, however scrupulously guarding the possessions of individuals, does not protect them in the enjoyment and communication of their opinions, in which they have an equal, and, in the estimation of some, a more valuable property. More sparingly should this praise be allowed to a government *where a man's religious rights are violated by penalties*, or fettered by tests, or taxed by a hierarchy.

Religious rights more sacred than property rights.

Conscience is the most sacred of all property; other property depending, in part, on positive law, the exercise of that [conscience] being a natural and unalienable right. To guard a man's house as his castle, to pay public and enforce private debts with the most exact faith, can give no title to invade a man's conscience, which is more sacred than his castle, or to withhold from it that debt of protection for which the public faith is pledged by the very nature and original conditions of the social part. . . .

Neglect of enforcing religious rights a perversion of government.

If there be a government, then, which prides itself in the inviolability of property; which provides that none shall be taken directly, even for public use, without indemnification to the owner, and yet directly violates the property which individuals have in

Violations of rights.

their opinions, their religion, their passions, and their faculties; — nay more, which indirectly violates their property in their actual possessions, *in the labor that acquires them their daily subsistence, and in the hallowed remnant of time which ought to relieve their fatigues and soothe their cares*,[1] — the inference will have been anticipated that such a government is not a pattern for the United States.

How Sunday laws violate human rights.

[1] This point is one that seems to be entirely overlooked by the Sundayist. Sunday laws not only encroach upon the privacy of the home, upon the sacredness of one's own domicile, but they actually deprive their victims of one seventh of their means of subsistence, — a deprivation which a laboringman can ill afford. But entirely apart from whether the deprivation can be afforded or not is the question of whether the legislature has the constitutional power to take one seventh of a man's living to place upon the altar of an opposing creed. Much less would be the usurpation if baptism were enforced by law, the Lord's supper made a civil ordinance, and so on, for such a course would affect not his means of sustenance, whilst Sunday laws are equally an outrage on the conscience and at the same time violate the individual's inalienable right to the free use of his time, and, in part, the very means of subsistence itself. No one law could more fully encroach upon the civil and religious freedom of the individual than do these Sunday laws, the enforcement of which is now so generally demanded. Conscience, liberty, property rights, and the pursuit of happiness are all swept away with one fell stroke of these dark-age relics of legal intolerance, and the individual is left, when the demands of the laws are satiated, without property, without recourse against his persecutors, and without sufficient means to procure further subsistence; for as soon as one fine is pronounced, the next Sunday's labor makes another fine, and so on, until his property as effectually is confiscated by the enforcement of the Sunday law as though provision actually had been made that "whoever violates the provisions of this act by laboring upon the first day of the week commonly called Sunday, shall have his land, his home, his goods, and whatsoever he hath, sold, and the proceeds thereof shall be taken as a fine for such unlawful labor contrary to the provisions of this statute; and, further, anyone so laboring shall thereafter be kept and confined in statesprison as a further penalty for continued violations of the provisions herein made."

Workings of Sunday laws.

And when his property is gone, the Seventh-day observer finds himself penniless, without employment, and refused work everywhere because he does not work on Saturday. And then the poor man is under the necessity of letting his family go to the poorhouse, or be supported by some sympathetic soul, or else give up his religion — dearer

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property and the property in rights; they will rival the government that most sacredly guards the former, and by repelling its example in violating the latter, will make themselves a pattern to that and all other governments.

Rights must be respected.

than all else besides. Is this all the protection that government can give to an American citizen if he happens to be the devotee of an unpopular belief? Are not such laws a thousand times more destructive of liberty than they are the guarantors of freedom? And, lastly, will the courts of law, the immemorial conservators of justice, law, and equity, permit further such flagrant aggressions upon the most sacred rights of the citizen, the property of whom they were instituted to protect to the uttermost?

Effects of Sunday laws.

Where public opinion is so powerful a factor in controlling the administration of law as it is in America, the people should manifest their disapproval of these repeated acts of injustice. It is only by checking them in their beginnings that they can be checked at all. For as they become more frequent, the injustice attending the violation of rights, becomes a matter of course, as did the enslavement of the negro, and the power to persecute can be overthrown only by revolution. Let Sundayism and religious legislation once receive the approval of the controlling power in this nation, and the epoch of religious freedom will be at an end in this land of liberty. Religious feeling rightly directed is the most powerful factor that exists in the accomplishment of reform; but it has demonstrated also that wrongly directed, it is probably the most powerful factor that exists in the accomplishment of the destruction of liberty and manhood. Force is blind; it must be guided: rightly guided, it is potent to accomplish untold good for the human family; wrongly directed, all that good will be transformed into evil. It is therefore that the power of the state should never be allowed to cross the bounds that centuries of experience have demonstrated are the bounds necessary to its just existence.

Public opinion.

The common law of the English people says that "Force ought to follow the law but not to precede it." The power of the state, in order to be just, must have a guide, and that guide is the law. Power must limit itself to the path of law; then each has his rights and all have just liberty: we have neither undue centralization or despotism — the action of the strong without reference to the rights or relations of the weak — on the one hand; nor the lawless action of the criminal — the action of the few without reference to the rights or relations of the many — on the other. Law is the due balance between state-despotism and chaotic anarchy and crime.

Common-law principles.

May 26, 1797.

TREATY OF PEACE AND FRIENDSHIP

BETWEEN THE UNITED STATES OF AMERICA AND THE BEY AND SUBJECTS OF TRIPOLI, OF BARBARY.[1]

COMMUNICATED TO THE SENATE, MAY 26, 1797.

. . . . . .

Our government not founded on Christianity.

No enmity towards the Mahometan religion.

ARTICLE 11. *As the government of the United States of America is not, in any sense, founded on the Christian religion,*[2] as it has in itself no character of enmity against the laws, religion, or tranquillity, of Mussulmans; and, as the said States never entered into any war, or act of hostility against any Mahom-

[1] "American State Papers," Class I, Foreign Relations, volume ii, page 18; "United States Statutes at Large," volume viii, Foreign Treaties, page 154. According to article six of the Constitution of the United States, "All treaties made, or which shall be made, under the authority of the United States, *shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.*" Whenever a right grows out of, or is protected by, a treaty, it is sanctioned against all the laws and judicial decisions of the States; and whoever may have the right under any treaty, it is to be protected. Owings *v.* Norwood's Lessee, 5 Cranch, 344. Treaties are sometimes regarded as administerial measures, rather than measures of the government as a whole, being carried into execution by the sovereign power of the respective parties to the instrument. According to a decision of the United States Supreme Court, however, we do not so regard them. In Foster and Elam *v.* Neilson, 2 Pet. 314, Chief Justice Marshall declared: "In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision."

Treaties the supreme law of the land.

Not merely administerial measures.

Treaties must be regarded in all courts.

[2] Dr. Philip Schaff, of the Union Theological Seminary, New York, says that he learns "from Dr. Francis Wharton that the treaty was framed by an ex-Congregational clergyman." "Church and State in

Framing of the treaty.

etan nation, it is declared by the parties, that no pretext, arising from religious opinions, shall ever produce an interruption of the harmony existing between the two countries.

No religious pretext to interrupt existing harmony.

. . . . . .

the United States," page 41, note 2. So there was no antagonism or disrespect to the Christian religion intended; nor do the words convey any such impression to the unbiased mind. It is simply a plain and unequivocal statement, though negative in form, of the absolute equality, as far as our government is concerned, of other religions with the Christian religion. "*It is not the legitimate province of the legistature,*" as the United States Senate declared, "*to determine what religion is true, or what false.*" All are entitled to an impartial protection from the government; and it is entirely foreign to its sphere to inquire when, how, why, or where a person worships or does not worship. The declaration in the treaty is declarative of American institutions as understood by the statesmen founding them, and by the people at that time.

Not the province of the legislature to determine religious questions.

Entirely foreign to its sphere.

The writings of Thomas Jefferson, James Madison, and others, also furnish conclusive proof on this point. Speaking of the Virginia "Act for establishing religious freedom," Jefferson, in his "Autobiography," gives the following, which is of interest in this connection:

"The bill for establishing religious freedom, the principles of which had, to a certain degree, been enacted before, I had drawn in all the latitude of reason and right. It still met with opposition; but, with some mutilations in the preamble, it was finally passed; and a singular proposition proved that *its protection of opinion was meant to be universal.* Where the preamble declares that coercion is a departure from the plan of the holy Author of our religion, an amendment was proposed by inserting the word 'Jesus Christ,' so that it should read, 'a departure from the plan of Jesus Christ, the holy Author of our religion;' *the insertion was rejected by a great majority*, in proof that they meant to comprehend, within the mantle of its protection, *the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.*" "Works of Thomas Jefferson," volume i, page 45.

Jefferson's bill establishing religious freedom.

Protection of opinion meant to be universal.

Embraces every shade of belief.

And Madison, in his celebrated "Memorial and Remonstrance" of 1785, *ante* page 86, says: "*Who does not see that the same authority which can establish Christianity, in exclusion of all other religions, may establish, with the same ease, any particular sect of Christians, to the exclusion of all other sects?*"

If a system of religion can be established, then also can some sect.

The treaty was made under the administration of George Washington, and was signed and sealed at Tripoli on the fourth day of November, 1796, and at Algiers, the third day of January, 1797, by Hassan Bashaw, Dey of Algiers, and Joel Barlow, Consul-General of the United States.

1805-06.

TREATY OF PEACE, AMITY, AND COMMERCE.

BETWEEN THE PRESIDENT AND CITIZENS OF THE UNITED STATES OF AMERICA, AND THE BASHA, BEY, AND SUBJECTS OF TRIPOLI, IN BOMBAY.[1]

CONCLUDED JUNE 4, 1805; RATIFIED BY THE SENATE APRIL 12, 1806.

ARTICLE XIV. As the government of the United States of America has in itself no character of enmity against the laws, religion, or tranquillity of Mussulmen, and as the said States never have entered into any voluntary war or act of hostility against any Mahometan except in defense of their just rights to freely navigate the high seas, it is declared by the contracting parties that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two nations.[2] And

Mutual religious freedom guaranteed.

While it is true, as indicated in the treaty with Tripoli of 1797, that the government of the United States is not, in any *legal* sense, founded on the Christian religion, it is only proper to state that it *is* founded on the *Christian idea* of civil government, which is that the government shall be *civil*, and not *religious*, in harmony with the principle laid down by the Author of Christianity, to render to Cæsar only that which is Cæsar's. And, as suggested by Bancroft (see *ante* page 144), it was the first nation in all history which "dared to set the example of accepting in its relations to God the principle first divinely ordained of God in Judea." In this sense, and in this only, was it founded on the Christian religion. But the National Reformers wish to overturn all this, and have the government, by law, select and establish the Christian religion as the religion of the nation.

Founded on Christian idea of civil government.

[1] "Treaties and Conventions Concluded between the United States of America and other Powers, Since July 4, 1776," published by the Department of State, 1889, page 1084.

[2] Like the treaty of 1797, this treaty showed the government of the United States to be impartial in matters of religion,— that it had no established religion, and that the question of religion and religious opinion was not to be considered in national affairs. It showed that it was not the policy of this government to compel those within its jurisdiction, who are not Christians, to act as though they were. The spirit manifested in it is the very opposite of that of the bigot,

What later treaty shows.

the consuls and agents of both nations respectively shall have liberty to exercise his religion in his own house. All slaves of the same religion shall not be impeded in going to said consul's house at hours of prayer.

Freedom of worship guaranteed.

which, under the title, "The Bigot's Creed," the poet has fittingly described in the following words:

"Believe as I believe — no more, no less:
That I am right, and no one else, confess;
Feel as I feel, think only as I think,
Eat what I eat, and drink but what I drink
Look as I look, do always as I do;
And then, and only then, I'll fellowship with you.

The bigot's creed.

"That I am right, and always right, I know,
Because my own convictions tell me so;
And to be right is simply this: to be
Entirely and in all respects like me.
To deviate a jot, or to begin
To question, doubt, or hesitate, is sin.

"Let sink the drowning man, if he'll not swim
Upon the plank that I throw out to him;
Let starve the famishing, if he'll not eat
My kind and quantity of bread and meat;
Let freeze the naked, too, if he'll not be
Supplied with garments such as made for me.

"'Twere better that the sick should die than live
Unless they take the medicine I give.
'Twere better that sinners perish than refuse
To be conformed to my particular views;
'Twere better that the world stood still than move
In any other way than that which I approve."

An editorial in the "Western Watchman" (Catholic), of St. Louis, under date of August 25, 1910, says:

"We have no union of church and state in this country, for the simple reason that our state is not Christian; and the Church cannot be yoked to an unchristian commonwealth."

No union because state not Christian.

The decision of the Supreme Court, of February 29, 1892, declaring this a "Christian nation," however, has paved the way for the union to which the "Watchman" refers. See pages 487-513. There are those here who are ready for a union of church and state in this country as soon as the state can be converted to their way of religious thinking.

Supreme Court has paved way.

1800-1880

POLITICAL PLATFORMS.

FIRST AMERICAN PLATFORM.

ADOPTED IN CONGRESSIONAL CAUCUS, PHILADELPHIA, IN 1800, BY THE DEMOCRATIC-REPUBLICAN PARTY.

Preservation of the Constitution.

1. An inviolable preservation of the federal Constitution, according to the true sense in which it was adopted by the States, that in which it was advocated by its friends, and not that which its enemies apprehended, who, therefore, became its enemies. . . .

Religious freedom.

8. Freedom of religion, and opposition to all maneuvers to bring about a legal ascendancy of one sect over another.

Political freedom.

9. Freedom of speech and the press; and opposition, therefore, to all violations of the Constitution, to silence, by force, and not by reason, the complaints or criticisms, just or unjust, of our citizens against the conduct of their public agents.

. . . . . .

EQUAL-RIGHTS PLATFORM.

DEMOCRATIC EQUAL-RIGHTS PLATFORM, ADOPTED IN THE NEW YORK CONVENTION 1836.

Equality.

We hold these truths to be self-evident that all men are created free and equal; that they are endowed by their Creator with certain inalienable rights, among which are life, liberty, and the pursuit of happiness; that the true foundation of republican government is the equal rights of every citizen in his person and property, and in their management; that

Rights not abridged on entering society.

the idea is quite unfounded that on entering into society we give up any natural right; that the rightful power of all legislation is to declare and enforce

only our natural rights and duties, and to take none of them from us; that no man has the natural right to commit aggressions on the equal rights of another, and this is all from which the law ought to restrain him; that every man is under the natural duty of contributing to the necessities of society, and this is all the law should enforce upon him; that when the laws have declared and enforced all this, they have fulfilled their functions.

Rights must not be infringed.

Limitations of legislation.

. . . . . .

PRINCIPLES OF DEMOCRACY.

ADOPTED AT THE DEMOCRATIC CONVENTIONS FROM 1840 TO 1856.

Resolved, That the American democracy place their trust in the intelligence, the patriotism, and discriminating justice of the American people.

Public opinion.

. . . . . .

That the federal government is one of limited power, derived solely from the Constitution, and the grants of power made therein ought to be strictly construed by all the departments and agents of the government, and that it is inexpedient and dangerous to exercise doubtful constitutional powers.

Government limited to powers granted.

. . . . . .

That the liberal principles embodied by Jefferson in the Declaration of Independence, and sanctioned in the Constitution, which makes ours the land of liberty and the asylum of the oppressed of every nation, have ever been cardinal principles in the democratic faith.

Principles of Jefferson reaffirmed.

. . . . . .

Resolved, That the foundation of this union of States having been laid in, and its prosperity, ex-

Foundation principles.

Government founded on principles of religious liberty.

pansion, and pre-eminent example in free government built upon, entire freedom of matters of religious concernment, and no respect of persons in regard to rank or place of birth, no party can justly be deemed national, constitutional, or in accordance with American principles, which bases its exclusive organization upon religious opinions and accidental birthplace, and hence a political crusade in the nineteenth century, and in the United States of American, against Catholics and foreign-born, is neither justified by the past history or future prospects of the country, nor in unison with the spirit of toleration and enlightened freedom which peculiarly distinguishes the American system of popular government.

Political crusades against any religion unamerican.

. . . . . .

LIBERAL REPUBLICAN PLATFORM.

ADOPTED AT CINCINNATI, MAY 1, 1872.

Equality of all persons of all religions.

We recognize the equality of all men before the law, and hold that it is the duty of government, in its dealings with the people, to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political.

. . . . . .

REPUBLICAN PLATFORM.

ADOPTED AT PHILADELPHIA, JUNE 5, 1872.

. . . . . .

Equality for all.

Complete liberty and the exact equality in the enjoyment of all civil, political, and public rights should be established and effectually maintained throughout the Union by efficient and appropriate State and federal legislation. Neither the law nor its administration should admit any discrimination

in respect to citizens by reason of race, creed, color, or previous condition of servitude.

No distinction of creed.

. . . . . .

The republican party propose to respect the rights reserved by the people to themselves as carefully as the powers delegated by them to the State and federal government. It disapproves of the resort to unconstitutional laws[1] for the purpose of removing evils by interfering with the rights not surrendered by the people to either the State or national government.

Raster resolution.

Sunday laws unconstitutional.

[1] This resolution in the platform upon which President Grant was re-elected to the presidency was framed with direct reference, among other things, to Sunday laws which the Republican party denounced as unconstitutional, as is conclusively proved by a letter of the drafter of the resolution, Mr. Herman Raster, written thirty-four days afterward. In this letter, written from Chicago, Illinois, July 10, 1872, and addressed to Mr. J. M. Miller, the writer states that one purpose he had in writing this resolution was "the discountenancing" of all "Sunday laws," and this upon the ground of conserving "the rights of the people which had not been delegated to either national or State governments," among which he mentions "the right to look upon the day on which Christians have their prayer-meetings as any other day." This he gives as "the true meaning and intent of the sixteenth resolution of the Philadelphia platform."

Nor has this resolution ever been supplaced or the idea repudiated by subsequent conventions. President Grant's utterance a little later, on the separation of religion and the state, only emphasizes this declaration of the national convention. In his address before the Army of the Tennessee, at Des Moines, Iowa, in 1875, he said:

"Leave the matter of religion to the family altar, the church, and the private school supported entirely by private contribution. Keep the church and state forever separate."

Grant's famous utterance.

For context and more extended quotation, see page 236.

DEMOCRATIC PLATFORM.

ADOPTED AT BALTIMORE, JULY 9, 1872.

No distinctions on account of religious belief.

We recognize the equality of all men before the law, and hold that it is the duty of government, in its dealings with the people, to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political.

. . . . . .

NATIONAL LIBERAL PLATFORM.

ADOPTED AT CINCINNATI, SEPTEMBER 14, 1879.

Separation of church and state.

Total separation of church and state, to be guaranteed by amendment of the national Constitution; including the equitable taxation of church property, secularization of the public schools, abrogation of Sabbatarian laws, abolition of chaplaincies, prohibition of public appropriations for religious purposes, and all measures necessary to the same general end.

Abrogation of Sunday laws, etc.

Protection for all.

National protection for national citizens in their equal civil, political, and religious rights, to be guaranteed by amendment of the United States Constitution and afforded through the United States Court.

REPUBLICAN PLATFORM.

ADOPTED AT CHICAGO, JUNE 2, 1880.

Religious legislation unconstitutional.

The Constitution wisely forbids Congress to make any law respecting an establishment of religion; but it is idle to hope that the nation can be protected against the influences of sectarianism while each State is exposed to its domination. We, therefore, recommend that the Constitution be so amended as to lay the same prohibition upon the Legislature of each State, to forbid the appropriation of public funds to the support of sectarian schools.

WASHINGTON VERSUS SUNDAY LAWS.

FROM THE "SAN FRANCISCO EXAMINER."

Letter to Washington.

The following letter was written by George Washington, when president of the United States, in answer to a letter from a Seventh-day Baptist society, some of the members of which had been fined and imprisoned for laboring on Sunday. They wished to know if he, as president of the convention that framed the Constitution of the United States, understood that instrument to warrant any such interference with their religious freedom and rights of conscience. The letter is dated August 4, 1789, and reads as follows:

Washington's reply.

"If I had had the least idea of any difficulty resulting from the Constitution adopted by the convention of which I had the honor to be president, when it was formed, so as to endanger the rights of any religious denomination, then I never should have attached my name to that instrument. If I had any idea that the general government was so administered that liberty of conscience was endangered, I pray you be assured that no man would be more willing than myself to revise and alter that part of it, so as to avoid religious persecution. You can, without doubt, remember that I have often expressed my opinion that *every man who conducts himself as a good citizen is accountable alone to God for his religious faith, and should be protected in worshiping God according to the dictates of his own conscience.*

Sole test of American citizenship.

"GEORGE WASHINGTON."

Reprint of letter.

This letter is copied from "An Appeal to the Friends of Equal Rights and Religious Freedom in

Opposed to Sunday laws.

the United States," by the Seventh-day Baptist General Conference, published in 1846, and shows conclusively that the "father of his country" had no sympathy with, nor approval of, Sunday laws like those on our statute books, which would punish a Jew or a Seventh-day Baptist or Adventist for not observing as a day of rest a day which, according to his religious belief, is one of those upon which he is commanded to labor and do all his work.

ADDRESS TO THE JEWS.

WRITTEN BY GEORGE WASHINGTON TO CITIZENS OF NEWPORT.[1]

1790.

TO THE HEBREW CONGREGATION, NEWPORT:

Expression of esteem.

While I receive with much satisfaction your address replete with expressions of affection and esteem, I rejoice in the opportunity of assuring you that I shall always retain a grateful remembrance of the cordial welcome I experienced in my visit to Newport, from all classes of citizens.

Favorable outlook.

The reflection on the days of difficulty and danger which are past is rendered the more sweet from the consciousness that they are succeeded by days of uncommon prosperity and security. If we have wisdom to make the best use of the advantage with which we are now favored, we cannot fail, under the just administration of a good government, to become a great and a happy people.

American policy.

The citizens of the United States of America have the right to applaud themselves for having given to mankind examples of an enlarged and liberal policy — a policy worthy of imitation. All possess alike

Equal rights of all.

liberty of conscience and immunities of citizenship. It is now no more that toleration is spoken of as if it

[1] This paper is the reply of President Washington to the address of citizens of Newport, dated August 17, 1790. It is copied from the original document in possession of Frederick Phillips, New York. The letter is without date.

was by the indulgence of one class of people that another enjoyed the exercise of their inherent natural right.[1] *For happily the government of the United States, which gives to bigotry no sanction, to persecution no assistance, requires only that they who live under its protection shall demean themselves as good citizens* in giving it on all occasions their effectual support.

Only test of American citizenship.

It would be inconsistent with the frankness of my character not to avow that I am pleased with your favorable opinion of my administration and fervent wishes for my felicity. May the children of the stock of Abraham who dwell in this land continue to merit and enjoy the good will of the other inhabitants, while every one shall sit in safety under his own vine and fig-tree, and there shall be none to make him afraid. May the Father of all mercies scatter light and not darkness in our paths, and make us all in our several vocations useful here and in his own due time and way everlastingly happy.

Well wishes to the Jew.

[1] With these, and hundreds of other similar statements of American law from so many of those who were the leading statesmen in the work of forming our constitutional system, it is difficult to understand how any person can be of the opinion that Sunday statutes are legal. No law can be legal placing disabilities or disadvantages upon a small sect that would not be legal if it placed a similar disadvantage or disability upon a large sect. The number affected is immaterial. Justice is justice. The law knows neither great nor small, many nor few; but is one and the same to all. The idea that because the Jews and Seventh-day Christians are few in number their rights are not to be respected, is not only subversive of law, but it is dangerous to national existence as well. Law cannot be trampled under foot with impunity nor can justice be set aside at will, without experiencing the consequences which attend anarchy everywhere. Just to the extent that law is dethroned, just to that extent anarchy reigns; and violence and disorder invariably result. Justice must be done to all, weak or strong. The introduction of religious statutes into our legal polity and the enforcement of the same, will surely result and can only result in local religious animosities and differences which will grow and spread until the entire country will be embroiled as a result. To insure "domestic tranquillity,"— one of the great objects of the Constitution,— therefore, let legislators keep their hands off religion and religious questions.

Illegality of Sunday statutes.

Jan. 23, 1808.

RELIGIOUS PROCLAMATIONS UNCONSTITUTIONAL.

WRITTEN BY THOMAS JEFFERSON TO THE REV. MR. MILLAR.[1]

WASHINGTON, January 23, 1808.

SIR: I have duly received your favor of the eighteenth, and am thankful to you for having written it, because it is more agreeable to prevent than to refuse what I do not think myself authorized to comply with. I consider the government of the United States *as interdicted by the Constitution from intermeddling with religious institutions, their doctrines, discipline, or exercises.*[2] This results not only from the provision that no law shall be made respecting the establishment or free exercise of religion, but from that, also, which reserves to the States the powers not delegated to the United States. Certainly, no power to prescribe any religious exercise, or to assume authority in religious discipline, has been delegated to the general government. It must, then, rest with the States, as far as it can be in any human authority. But it is only

Constitution interdicts intermeddling with religion.

No such power delegated.

[1] "Works of Thomas Jefferson," volume v, pages 236, 237.

Jefferson refused to proclaim festivals.

Alliance between church and state condemned.

[2] In harmony with the principle here laid down, Jefferson refused to proclaim any fasts or festivals. In a letter to Mr. Lincoln, dated January 1, 1802, he said: "The Baptist address, now inclosed, admits of a condemnation of the alliance between church and state, under the authority of the Constitution. It furnishes an occasion, too, which I have long wished to find, of saying why I do not proclaim fastings and thanksgivings, as my predecessors did. The address, to be sure, does not point at this, and its introduction is awkward. But I foresee no opportunity of doing it more pertinently. I know it will give great offense to the New England clergy; but the advocate of religious freedom is to expect neither peace nor forgiveness from them." "Works of Thomas Jefferson," volume iv, page 427. Madison, also, considered the enjoining of fasts and festivals as an unwarranted assumption on the part of the chief executive.

proposed that I should *recommend*, not prescribe, a day of fasting and prayer. That is, that I should *indirectly* assume to the United States an authority over religious exercises, *which the Constitution has directly precluded them from.* It must be meant, too, that this recommendation is to carry some authority, and to be sanctioned by some penalty on those who disregard it; not, indeed, of fine and imprisonment, but of some degree of proscription, perhaps in public opinion. And does the change in the nature of the penalty make the recommendation less a *law* of conduct for those to whom it is directed? I do not believe it is for the interest of religion to invite the civil magistrate to direct its exercises, its discipline, or its doctrines; nor of the religious societies, that the general government should be invested with the power of effecting any uniformity of time or matter among them. Fasting and prayer are religious exercises; the enjoining them, an act of discipline. Every religious society has a right to determine for itself the times for these exercises, and the objects proper for them, according to their own particular tenets; and this right can never be safer than in their own hands, *where the Constitution has deposited it.*[1]

Jefferson's answer to sophistry.

Prescribing religious observances directly prohibited by Constitution.

Nor is it for the interest of religion.

Fasting and prayer religious exercises.

Should be left where deposited by the Constitution.

. . . . . .

[1] This was a characteristic of President Jefferson. He was ever jealous of the rights of the people, and was particularly careful not to abridge or encroach in any way upon those rights. It was on account of this jealousy that he felt disappointed when he found that the Constitutional Convention at Philadelphia had omitted a declaration of rights in the new Federal Constitution; and he and Madison were mainly instrumental in securing the first ten amendments which now stand as a part of that instrument. And, now, after having secured the first amendment, among the others, he was desirous of having it strictly carried out — not to have it stand as a dead letter; he was desirous that it might fulfil the ends for which it was adopted — to separate entirely and forever every connection between religion and the state in the United States of America.

A characteristic of Jefferson.

His jealousy for rights of people.

Anxiety to preserve integrity of Constitution.

Object of first amendment.

11TH CONGRESS] [2D SESSION

April 30, 1810.

AN ACT

REGULATING THE POST-OFFICE ESTABLISHMENT.[1]

ENACTED APRIL 30, 1810.

. . . . . .

Post-offices to be kept open on every day on which mail arrives.

SECTION 9. *And be it further enacted*, That every postmaster shall keep an office in which one or more persons shall attend on every day on which a mail, or bag, or other packet, or parcel of letters shall arrive by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster at all reasonable hours, *on every day of the week*, to deliver, on demand, any letter, paper, or packet, to the person entitled to or authorized to receive the same.

Postmaster to deliver mail on every day of the week.

. . . . . .

11TH CONGRESS] [3D SESSION

PETITIONS

IN REFERENCE TO SUNDAY MAILS.

Jan. 4, 1811.

FRIDAY, JANUARY 4.[2]

Petition presented against Sunday mails.

Mr. Findley presented a petition of the Synod of Pittsburg, in the State of Pennsylvania, praying that the laws and regulations for the government of the Post-office Establishment may be so altered or amended as to prohibit mail stages and post riders from traveling, and post-offices being kept open, on Sunday.

Referred.

Referred to the Postmaster-General.

[1] "United States Statutes at Large," volume ii, page 592. This act was repealed March 3, 1825, by an act entitled "An act to reduce into one the several acts establishing and regulating the Post-office Department." The above section, however, was reënacted.

[2] "Annals of Congress," page 487.

FRIDAY, JANUARY 18. Jan. 18, 1811.

Similar petitions presented and referred to the Postmaster-General. Petitions presented and referred.

FRIDAY, JANUARY 25. Jan. 25, 1811.

Mr. John Porter presented a petition of sundry inhabitants of Philadelphia, to the same effect with the petition of the Synod of Pittsburg, presented on the fourth instant; which was read. Petition presented and read.

THURSDAY, JANUARY 31.[2] Jan. 31, 1811.

The Speaker laid before the House a report from the Postmaster-General,[3] on the petitions of the Synod of Pittsburg, and of sundry inhabitants of the western country, in the States of Pennsylvania, Virginia, and Ohio, referred on the fourth and eighteenth instant; which was read, and referred to the Committee on Post-offices and Post-roads, to report specially by bill or otherwise. Report on petitions read and referred.

11TH CONGRESS] [3D SESSION

REMONSTRANCE

AGAINST THE DELIVERY OF LETTERS, PAPERS, AND PACKETS, AT THE POST-OFFICE ON THE SABBATH.[4]

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 31, 1811. Jan. 31, 1811.

The Postmaster-General, in obedience to the resolutions[5] of the House of Representatives of the United States, passed on the fourth and eighteenth of the present month, respectfully reports: Report of Postmaster-General.

. . . . . .

[1] "Annals of Congress," pages 826, 827.

[2] "Annals of Congress," page 855.

[3] The report given herewith.

[4] "American State Papers," Class VII, pages 44, 45.

[5] Referring to him two memorials, from sundry citizens of Philadelphia and elsewhere, substantially similar, an extract from the first of which follows this report.

The act of 1810 required the receipt and delivery of letters by the post-offices on Sunday.

That, under and by virtue of the ninth section of the act of the thirtieth of April, 1810, the Postmaster-General conceived himself bound to compel the postmasters to receive letters from, and deliver letters to, the citizens, on the Sabbath day; and in conformity to that act, the following instruction was given to the postmasters, to wit:

Instruction of Postmaster-General.

"At post-offices where the mail arrives on Sunday, the office is to be kept open for the delivery of letters, etc., for one hour after the arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose."

Doubt as to whether he was warranted in limiting time to one hour.

The Postmaster-General further remarks, that from the peculiar phraseology of the ninth section of said act, it is doubted whether he be warranted by law in limiting the right of the citizens to demand their letters to one hour on the Sabbath; and, in one instance, in Pennsylvania, an officer has been prosecuted, under the section aforesaid, for refusing to deliver a letter on the Sabbath, not called for within the time prescribed by this office. Although in cases of extreme anxiety or national calamity, it may be proper for postmasters to open their offices for the reception and delivery of letters on the Sabbath, and particularly to the officers of government, still it is believed that the good sense of the officers is a sufficient safeguard for the delivery of letters under all such circumstances; and that compelling the postmasters to attend to the duties of the office on the Sabbath, is on them a hardship, as well as in itself tending to bring into disuse and disrepute the institutions of that holy day.

Judgment of postmasters considered a sufficient guarantee for the delivery of letters.

GIDEON GRANGER,
Postmaster-General.

General Post-office, January 30, 1811.

MEMORIAL AND PETITION.

1811.

To the Honorable, the Senate and House of Representatives of the United States, in Congress, the memorial, representation, and petition of the undersigned citizens, resident in Philadelphia, respectfully represents:

. . . . . .

Religious views prompt the complaint.

Your memorialists cannot, in justice to their own feelings, refrain from observing that the violation of known and universally received precepts, when sanctioned by the most powerful influence in the Union, cannot fail of having a tendency to justify every species of breach of the laws made for the strict observance of the first day of the week, as set apart by the command of God for his more immediate service.[1]

Tendency of Sunday mails to lessen regard for the day which the *petitioners* regard as holy.

Prohibition of the delivery of mail asked for on the Lord's day.

They do, therefore, most respectfully and earnestly petition your honorable body, that the said ninth section of the act, entitled, "An act regulating the Post-office Establishment," and passed the twenty-fifth of April last, may be so amended as to prohibit the delivery of letters, papers, and packets, on the first day of the week, commonly called the Lord's day. And your petitioners, as in duty bound, will ever pray.

JAMES P. WILSON, and others.

Basis of all Sunday-rest movements.

[1] This is the real foundation of all Sunday-rest movements; though for clandestine purposes, reasons are often given of a very different nature, as, solicitude for the public health, — as though the people were so devoid of common sense as not to know enough to rest when they are tired, without being compelled to do so by law! Mr. Chief Justice Ruffin, of the Supreme Court of North Carolina, in the case of the State *v.* Williams, 4 Iredell, 403, said: "The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation, of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty." Sabbath laws are the remnants of religious legislation; and it was only to appear to escape the force of incontrovertible arguments that such a shallow subterfuge as the "civil" Sabbath was invented.

Sunday prosecutions the result of religious feelings.

A shallow subterfuge.

12TH CONGRESS] [1ST SESSION

Jan. 3, 1812.

SUNDAY MAILS.[1]

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 3, 1812.

Mr. Rhea[2] made the following report:

House committee reports.

The Committee on Post-offices and Post-roads, to whom were referred the petition of the Synod of Presbyters and other citizens of Christian denominations, residing in the western parts of the United States, and the report of the Postmaster-General thereon, have had the same under consideration, and do respectfully report:

Report.

That however desirable it would be to advise the adoption of such regulations, relative to the carrying and opening of the mail, as might meet the views of the venerable Synod of Pittsburg, and the other petitioners, your committee cannot, at this peculiar crisis of the United States, recommend any alterations in the law regulating the Post-office Establishment; and do respectfully submit the following resolution:

Committee cannot recommend any alteration in the law.

Petitioners requested to withdraw petitions.

Resolved, That the petitioners have leave to withdraw their petitions.

Resolution concurred in.

The resolution was concurred in.[3]

[1] "American State Papers," Class VII, page 45.

[2] Chairman of the Committee on Post-offices and Post-roads.

The Sunday-mail reports of 1810–1830.

[3] This was the first of a series of adverse reports on this question of the discontinuance of Sunday mails. As the petitions increased and the demands of the clergy became more strenuous, the adverse reports were more decided. Again and again they refused to run the government according to the dictates of the ecclesiastical power; and, finally, when the question had become one of national interest, adverse petitions also coming in, and the best statesmen of the times opposing the "reform" movement, Senator Johnson wrote his celebrated reports which have received such general approbation. These reports were so well written and treated the subject so thoroughly that the movement was checked. Senator Johnson took pride in continuing the movement for complete religious freedom initiated by the founders of our government. Subsequently his popularity made him Vice-President of the United States.

Senator Johnson's reports.

12TH CONGRESS] [1ST SESSION

SUNDAY MAILS.[1]

June 15, 1812.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JUNE 15, 1812.

House committee reports.

Mr. Rhea made the following report:

The Committee on Post-offices and Post-roads, to whom was referred the memorial of the General Assembly of the Presbyterian Church in the United States of America, have had the same under consideration, and do respectfully report:

Report.

That, heretofore, during the present session of Congress, petitions of the Synod of Presbyters, and other citizens of several Christian denominations, residing in the western part of the United States, were referred to the Committee on Post-offices and Post-roads; that the prayers of the said petitions were, in their object, design, and end, similar to that of the memorial of the said reverend General Assembly; that your committee, after having had the aforesaid petitions under consideration, reported thereon on the third day of January last past:

Petitions similar to previous ones.

Previous report.

"That, however desirable it would be to advise the adoption of such regulations, relative to the carrying and opening of the mail, as might meet the views of the venerable Synod of Pittsburg, and the other petitioners, your committee cannot, at this peculiar crisis of the United States, recommend any alterations in the law regulating the Post-office Establishment, and do respectfully submit the following resolution:

Committee cannot recommend any alteration in the law.

"*Resolved*, That the petitioners have leave to withdraw their petitions."

Petitioners requested to withdraw petitions.

Resolution concurred in.

And the same resolution was afterwards concurred in.

1 "American State Papers," Class X, volume ii, page 194.

No reason for changing the report.

Your committee further report, that there doth not appear any reason to induce a change or alteration of the report made in the case of the petition of the venerable Synod of Pittsburg; nor hath any reason occurred to induce your committee to report on the memorial now under consideration, different from the report on that petition; they do, therefore, respectfully submit the following resolution:

Memorialists requested to withdraw their memorial.

Resolved, That the memorialists have leave to withdraw their memorial.

All which is respectfully submitted.

13TH CONGRESS] [3D SESSION

Jan. 20, 1815.

SUNDAY MAILS.[1]

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JANUARY 20, 1815.

Report of House committee.

Mr. Rhea, from the Committee on the Post-offices and Post-roads, to whom were referred sundry petitions and memorials remonstrating against the usage of transporting and opening the mail on the Sabbath, and the report of the Postmaster-General relating thereto, reported:

Question of great national importance.

That they have had the same under consideration, and deeming it of great national importance, particularly in time of war, that no delay should attend the

Inexpedient to discontinue Sunday mail service.

transportation of the mail, they deem it inexpedient to interfere with the present arrangement of the Post-office Establishment, and, therefore, submit the following resolution:

Resolved, That it is inexpedient to grant the prayer of the petitioners.

[1] "American State Papers," Class VII, page 46. The report was read and referred to a Committee of the Whole, and considered by them on Friday, February 10, 1815. See "Annals of Congress," pages 1084, 1186. The minutes of its consideration in the Committee of the Whole are inserted herein, *post* pages 185, 186.

REPORT OF POSTMASTER-GENERAL.

Jan. 16, 1815.

GENERAL POST-OFFICE, January 16, 1815.

SIR: The Postmaster-General, to whom were referred sundry memorials against the usage of transporting and opening the mails on the Sabbath, has the honor to report the following facts and observations:

Report of Postmaster-General.

The usage of transporting the mails on the Sabbath is coeval with the Constitution of the United States, and a prohibition of that usage will be first considered.

Sabbath transportation of mail coeval with the Constitution.

. . . . . .

RETURN J. MEIGS, JUN.[1]

To the Honorable, the Speaker of the House of Representatives.

13TH CONGRESS] [3D SESSION

SUNDAY MAILS.[2]

Jan. 27, 1815.

COMMUNICATED TO THE SENATE, JANUARY 27, 1815.

Mr. Daggett made the following report:

The committee of the Senate, to whom were referred the petitions of numerous citizens of the States of New Hampshire, Massachusetts, Connecticut, North Carolina, and Ohio, praying the Congress to prohibit the transportation and opening of the mail on the Sabbath, having attended to the duty assigned to them, respectfully report:

Report of the Senate committee.

That the importance of the subject, and the motives which actuate so large a portion of their fellow-citizens, are duly regarded and appreciated. Was the practice of the transportation of the mail on every day of the week now commenced, and that of

Subject an important one.

Not a new practice.

[1] Postmaster-General.

[2] "American State Papers," Class VII, page 47.

Opinion of committee.

opening it on the Sabbath under no regulations, the committee would consider it necessary to make some legislative provision on the subject.

Sabbath transportation of the mail has been carried on ever since the establishment of the government.

Public convenience has justified it.

The general government from its establishment has pursued a system of causing the mail to be transported on the Sabbath, on the great roads leading through and across the country, while the practice has been avoided on routes of less importance. The public convenience has justified these measures in the view of the government. In 1810, a law was made, directing "that every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail, or bag, or other packet or parcel of letters shall arrive, by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, on every day of the week, to deliver on demand, any letter, paper, or packet, to the person entitled to or authorized to receive the same."

Post-offices to be kept open on every day on which mail arrives.

Postmaster to deliver mail on every day of the week.

Committee indorse regulation concerning Sunday mails.

The committee learn with pleasure that the Postmaster-General, under this law, has prescribed the following regulation:

Instruction of Postmaster-General.

"At post-offices where the mail arrives on Sunday, the office is to be kept open for the delivery of letters, etc., for one hour after the arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose."

Continuance of regulation desired.

Presuming that the Postmaster-General will continue this regulation, and that he will, at all times, guard the post-office against improper practices, in respect to the opening the mail and the delivering of letters on the Sabbath; and considering the condition of the country, engaged in war, rendering fre-

quent communication through the whole extent of it absolutely necessary, the committee deem it inexpedient, at this time, to interfere and pass any laws on the subject-matter of the petitions referred, and they, therefore, respectfully submit the following resolution.

It is deemed inexpedient to interfere with the law.

Resolved, That, at this time, it is inexpedient to interfere and pass any laws on the subject-matter of the several petitions praying the prohibition of the transportation and opening of the mail on the Sabbath.

Petitions refused.

13TH CONGRESS] [3D SESSION

SUNDAY MAILS.[1]

Feb. 10, 1815.

FRIDAY, FEBRUARY 10, 1815.

The House resolved itself into a Committee of the Whole, on the report of the Committee on Post-offices and Post-roads, that it is *inexpedient* to make any alteration in the present regulations respecting the transportation and opening the mails on the Sabbath.

Report considered.

Mr. Farrow moved to amend the report so as to declare it *expedient*, instead of *inexpedient*, to grant the prayer of the petitioners. This motion was negatived without debate, and the committee rose and reported the resolution unamended to the House.

Amendment proposed.

Resolution, unamended, reported to House.

Mr. King, of Massachusetts, moved to lay the report on the table; which motion, after debate, was negatived.

Motion to table report, negatived.

Mr. King then moved to add to the end of the resolution the words, "during the present war," so as to confine the resolve to the inexpediency of acting on the subject during the present war. The question on Mr. King's motion was decided in the negative.

Motion to limit report, negatived.

[1] "Annals of Congress," volume iii, page 1146.

Another motion negatived.

Mr. Stanford then moved to amend the resolution by adding thereto the following: "So far as respects the progress of the mail and the issuance of letters on the Sabbath; but that the issuing of newspapers under the proper restrictions may be prohibited;" which motion was negatived.

Resolution adopted.

The question on concurring in the resolution reported by the committee, was then decided by yeas and nays. For the report, 81; against it, 41.

Petition refused.

So it was resolved that it is inexpedient to grant the prayer of the petitioners.[1]

[1] In refusing to grant the petition and thus to give preference to the Sunday-keeper over the Jew and Mahometan, the Senate did no more than to carry out the principles taught by Roger Williams nearly two hundred years before. In his "Letter to the People of Providence," A. D. 1655, he defines the limitations of governmental authority in a way which shows how far he was in advance of his times:

Principles of Williams.

Illustration of a commonwealth.

"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth or a human combination or society. It hath fallen out sometimes that both Papists and Protestants, Jews and Turks, may be embarked in one ship; upon which supposal I affirm that all the liberty

Religious rights.

of conscience that ever I pleaded for turns upon these two hinges — that none of the Papists, Protestants, Jews, or Turks be forced to come to the ship's prayers or worship, nor compelled from their particular prayers or worship, if they practise any. I further add that I never denied that, notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace, and sobriety be kept and practised, both among the seamen

Sphere of government.

and all the passengers. If any of the seamen refuse to perform their services, or passengers to pay their freight; if any refuse to help, in person or purse, toward the common charges or defense; if any refuse to obey the common laws and orders of the ship, concerning their common peace or preservation; if any shall mutiny and rise up against their commanders and officers; if any should preach or write that there ought to be no commanders or officers, because all are equal in Christ, therefore no masters, nor officers, nor laws, nor orders, nor corrections, nor punishments; — I say, I never denied, but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel, and punish such transgressors, according to their deserts and merits. This, if seriously and honestly minded, may, if it so please the Father of lights, let in some light to such as willingly shut not their eyes."

THE SPHERE OF CIVIL GOVERNMENT.

WRITTEN BY THOMAS JEFFERSON TO FRANCIS W. GILMER.[1] June 7, 1816.

MONTICELLO, June 7, 1816.

DEAR SIR: . . . Our legislators are not sufficiently apprised of the rightful limits of their power; that *their true office is to declare and enforce only our natural rights and duties, and to take none of them from us.*[2] No man has a natural right to commit

Office of the legislator.

Natural rights should not be taken away.

[1] "Works of Thomas Jefferson," volume vii, page 3.

[2] Blackstone, in section two of the introduction to his "Commentaries on the Laws of England," page 39 *et seq.*, states this principle as follows: "This will of his [man's] Maker is called the *law of nature.* . . . This law of nature, being coeval with mankind, and dictated by God himself, is of course *superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity if contrary to this; and such of them as are valid derive all their authority, mediately or immediately, from this original.*

Laws of nature.

Superior to all other laws.

All laws derive their validity from it.

"But in order to apply this to the particular exigencies of each individual, it is still necessary to have recourse to reason, whose office it is to discover, as was before observed, what the law of nature directs in every circumstance of life, by considering what method will tend the most effectually to our own substantial happiness. . . .

Reason its interpreter.

"*Those rights, then, which God and nature have established,* and are therefore called *natural rights,* such as are life and liberty, need not the aid of human laws to be more effectually invested in every man than they are; neither do they receive any additional strength when declared by the municipal laws to be inviolable."

Natural rights ours without governmental sanction.

"Even an act of Parliament, made against naturall equitie as to make a man judge in his owne case, is void in itselfe, for *Iura naturæ sunt immutabilia,* and they are *leges legum.*" Lord Chief Justice Hobart, page 87.

Any statute against natural justice void.

Upon the foregoing statement made by Blackstone, Herbert Spencer comments as follows: "'No human laws are of any validity if contrary to the law of nature; and such of them as are valid derive all their force and all their authority, mediately or immediately, from this original.' Thus writes Blackstone, to whom let all honor be given for having so far outseen the ideas of his time; and, indeed, we may say of our time. A good antidote, this, for those political superstitions which so widely prevail; a good check upon that sentiment of power-worship which still misleads us by magnifying the prerogatives of constitutional governments as it once did those of monarchs. Let men learn that a legisla-

No human law contrary to the law of nature, valid.

Blackstone ahead of his time.

Sphere of the law.

aggression on the equal rights of another; and this is all from which the laws ought to restrain him; every man is under the natural duty of contributing to the necessities of the society; and this is all the laws should enforce on him; and, no man having a natural right to be the judge between himself and another, it is his natural duty to submit to the umpirage of an impartial third. When the laws have declared and enforced all this, they have fulfilled their functions; and *the idea is quite unfounded, that on entering into society we give up any natural right.*[1] The trial of every law by one of these texts, would lessen much the labors of our legislators, and lighten equally our municipal codes. . . .

No natural rights given up by the formation of government.

The legislature not omnipotent.

ture is *not* 'our God upon earth,' though by the authority they ascribe to it, and the things they expect from it, they would seem to think it is. Let them learn rather that it is an institution serving a purely temporary purpose, whose power, when not stolen, is at the best borrowed." "Social Statics," chapter 19, section 2.

Authority of the legislature in matters of religion.

In reference to the authority of the legislature in religious matters, Madison, in his "Memorial and Remonstrance," of 1785, declared: "Either, then, we must say that the will of the legislature is the only measure of their authority, and that in the plentitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred." See *ante* page 37. The truth of the theory that the power of the legislature rightfully extends "only to the bodies and goods of men," as Roger Williams used to say, has been firmly established.

Authority of the legislature temporal only.

[1] The same political doctrine is expressed by Alexander H. Stephens:

Erroneous views.

"Many writers maintain that individuals, upon entering into society, give up or surrender a portion of their natural rights. This seems to be a manifest error. In forming single societies or states, men only enter into a compact with each other — a social compact — either expressed or implied, as before stated, *for their mutual protection in the enjoyment by each of all their natural rights.* The chief object of all good governments, therefore, should be the protection *of all the natural rights of their constituent members.* . . . No person has any natural right wantonly to hurt or injure another. The object of government is to prevent and redress injuries of this sort; for, in a state of nature, without the superior restraining power of government, the strong would viciously impose upon the weak. Wrongs upon rights could not be so efficiently prevented nor so adequately redressed.

Society for the protection of natural rights.

Object of government.

"Upon entering into society, however, *for the purpose of having their natural rights secured and protected, or properly redressed*, the weak *do not give up or surrender any portion of their priceless heritage* in any government constituted and organized as it should be."

No rights surrendered on the formation of government.

Herbert Spencer, also, develops the following principle:

"Every man has freedom to do all that he wills, provided that he infringes not the equal freedom of any other man." "Social Statics," chapter 6, section 1. Or, as subsequently expressed:

Statement of a principle.

"*Every man has the right to do whatsoever he wills, provided that in the doing thereof he infringes not the equal right of any other man.*"

Equality of mankind.

And, in considering the idea that man surrendered a portion of his natural rights upon entering into the social state, Spencer says:

"The self-importance of a Malvolio is sufficiently ludicrous; *but we must go far beyond it to parallel the presumption of legislatures.* Some steward who, deluded by an intense craving after dominion, and an impudence equal to his craving, should construe his stewardship into proprietorship, would more fitly illustrate it. Were such an one to argue that the estate he was appointed to manage had been virtually resigned into his possession; that to secure the advantages of his administration its owner had given up all title to it; that he now lived on it only by his (the steward's) sufferance; and that he was in future to receive no emoluments from it, except at his (the steward's) good pleasure, — then should we have an appropriate travesty upon the behavior of governments to nations; then should we have a doctrine perfectly analogous to this fashionable one, which teaches how men on becoming members of a community, give up, for the sake of certain social advantages, their natural rights. Adherents of this fashionable doctrine will doubtless protest against such an interpretation of it. They have no reasonable cause for doing so, however, as will appear on submitting them to a cross-examination. Suppose we begin it thus:

The presumption of legislatures.

An appropriate travesty

Cross-examination.

"'Your hypothesis that men, when they entered into the social state, surrendered their original freedom, implies that they entered into such state voluntarily, does it not?'

Entrance into the social state voluntary.

"'It does.'

"'Then they must have considered the social state preferable to that under which they had previously lived?'

Social state preferable.

"'Necessarily.'

"'Why did it appear preferable?'

"'Because it offered greater security.'

Greater security offered.

"'Greater security for what?'

"'Greater security for life, for property, for the things that minister to happiness.'

"'Exactly. To get more happiness: that must have been the object. If they had expected to get more *un*happiness, they would not have willingly made the change, would they?'

More happiness secured.

"'No.'

In what happiness consists.

"'Does not happiness consist in the due satisfaction of all the desires? in the due exercise of all the faculties?'

"'Yes.'

Happiness impossible without freedom.

"'And this exercise of the faculties is impossible without freedom of action. The desires cannot be satisfied without liberty to pursue and use the objects of them.'

"'True.'

Freedom is privilege of exercising rights.

"'Now it is this freedom to exercise the faculties within specific limits, which we signify by the term "rights," is it not?' (See "Social Statics," page 93.)

"'It is.'

Summary of argument.

"'Well, then, summing up your answers, it seems that, by your hypothesis, man entered the social state voluntarily; which means that he entered it for the sake of obtaining greater happiness; which means that he entered it to obtain fuller exercise of his faculties; which means that he entered it to obtain security for such exercise; which means that he entered it for the guaranteeing of his "rights."'

"'Put your proposition in a more tangible form.'

Simpler statement.

"'Very good. If this is too abstract a statement for you, let us attempt a simpler one. You say that a state of political combination was preferred mainly because it afforded greater security for life and property than the isolated state, do you not?'

"'Certainly.'

Man's rights.

"'Are not a man's claims to his life and his property amongst what we term his rights, and moreover, the most important of them?'

"'They are.'

Object of organized society.

"'Then to say that men formed themselves into communities to prevent the constant violation of their claims to life and property, is to say that they did it for the preservation of their rights?'

"'It is.'

Preservation of rights.

"'Wherefore, either way we find that the preservation of rights was the object sought.'

"'So it would seem.'

"'But your hypothesis is that men give up their rights on entering the social state?'

"'Yes.'

Contradiction involved.

"'See now how you contradict yourself. You assert that on becoming members of a society, men give up what, by your own showing, they joined it the better to obtain!'

Another statement.

"'Well, perhaps I ought not to have said that they "give up" their rights, but that they place them in trust.'

"'In whose trust?'

"'In that of a government.'

Government an agent.

"'A government, then, is a kind of agent employed by the members of a community, to take care of, and administer for their benefit, something given into its charge?'

"'Exactly.'

"'And of course, like all other agents, exercises authority only at the will of those who appoint it — performs all that it is commissioned to do subject to their approval?' Acts within its commissioned authority.

"'Just so.'

"'And the things committed to its charge still belong to the original owners. The title of the people to the rights they have placed in trust continues valid: the people may demand from this agent the full benefit accruing from these rights; and may, if they please, resume possession of them?' Logical conclusion.

"'Not so.'

"'Not so! What, can they not reclaim their own?'

"'No. Having once consigned their rights into the keeping of a legislature, they must be content with such use of them as that legislature permits.'

"And thus we arrive at the curious doctrine above referred to, that the members of a community having intrusted an estate (their rights) to the care of a steward (their government), thereby lose all proprietorship in such estate, and can have no benefit from it, except what their steward pleases to vouchsafe!" Ludicrous position of our opponents.

This legal principle is well established in this country as is evidenced by the following decision of the Supreme Court of the United States: View of our supreme courts.

"It must be conceded," says our highest court, "that there are such [private] rights in every free government *beyond the control of the state.* A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens, subject at all times to the absolute disposition and unlimited control *of even the most democratic depository of power*, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but *it is none the less a despotism.* It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

"The theory of our governments, state and national, *is opposed to the deposit of unlimited power anywhere.* The executive, the legislative, the judicial branches of these governments are all of limited and defined powers. All government limited.

"There are limitations on such powers that grow out of the essential nature of all free governments; — implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B, who were husband and wife to each other, should be so no longer; but that A should thereafter be the husband of C, and B the Legislative limitations.

Rights are just claims.

wife of D; or which should enact that the homestead now owned by A should no longer be his but should henceforth be the property of B."

Judge Cooley in his "Constitutional Limitations" also asserts in part, the principle underlying the foregoing decision of the Supreme Court. Rights, as here used, are just claims according to the law of pure equity. Declarations of rights are simply declarations of these claims;—the claims are valid and just, whether they are or are not recognized in our constitutions. Judge Cooley says:

Cooley's statement of the law.

"The bills of rights in the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property over to another would nevertheless be void. If the act proceeded upon the assumption that such other person was justly entitled to the estate, and therefore it was transferred, it would be void because judicial in its nature; and if it proceeded without reasons, it would be equally void, as neither legislative nor judicial, but a mere arbitrary fiat. . . .

Parliament legally limited.

"The Parliament of Great Britain, indeed, as possessing the sovereignty of the country, has the power to disregard fundamental principles, and pass arbitrary and unjust enactments; but it cannot do this rightfully, and it has the power to do so simply because there is no written constitution from which its authority springs or on which it depends, and by which the courts can test the validity of its declared will.

Old common-law limitation binding here.

"The rules which confine the discretion of Parliament within the ancient landmarks are rules for the construction of the powers of the American legislatures; and however proper and prudent it may be expressly to prohibit those things which are not understood to be within the proper attributes of legislative power, such prohibition be regarded as essential, when the extent of the power apportioned to the legislative department is found upon examination not to be broad enough to cover the obnoxious authority. The absence of such prohibition cannot, by implication, confer power.

Authority of declarations of rights.

"Nor, where fundamental rights are declared by the constitution, is it necessary at the same time to prohibit the legislature, in express terms, from taking them away. The declaration is itself a prohibition, and is inserted in the constitution for the express purpose of operating as a restriction upon legislative power." "Constitutional Limitations," chapter 7.

Sovereignty legally limited.

These fundamental principles of our governmental system are too often overlooked. The truth is, according to the American political system, that the rights of man are wholly "*beyond the legitimate reach of sovereignty*," as Madison says, "*wherever vested or however viewed.*" Sovereignty, according to the common-law idea, is amenable to law. The controlling power in a state has no more right to violate law than has any other power. Law means the path in which power should go, and we therefore have the common-law maxim: "Force should follow the law but not precede it." It is this view that is here set forth.

FREEDOM OF RELIGIOUS OPINION.

WRITTEN BY JAMES MADISON TO M. M. NOAH.[1] May 15, 1818.

MONTPELIER, May 15, 1818.

SIR: I have received your letter of the 6th, with the eloquent discourse delivered at the consecration of the Jewish synagogue. Having ever regarded the freedom of religious opinions and worship as equally belonging to every sect, and the secure enjoyment of it as the best human provision for bringing all either into the same way of thinking, or into that mutual charity which is the only substitute, I observe with pleasure the view you give of the spirit in which your sect partake of the blessings offered by our government and laws.[2]

Religious freedom belongs equally to Jew and Christian.

This equal freedom a blessing.

[1] "Writings of James Madison," volume iii, page 97.

[2] Madison held that the fundamental principles of our government were so equitable, so liberal,—so just to the Jew, to the Turk, to the dissenter, to the agnostic,—that any bill guaranteeing this equality would probably be defective in that it could not be worded so as to be broad enough to cover all cases liable to arise. He was afraid that any provision they might make would be given too narrow a definition—not given the full meaning intended. His effort at breadth is seen in the first amendment:

Extent of American liberty.

Guarantees of liberty not sufficiently broad.

"*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.*"

Madison's original proposed amendment.

While this question was under consideration, he wrote as follows to Jefferson:

"There is great reason to fear that a positive declaration of some of the most essential rights could not be obtained in the requisite latitude. I am sure that the rights of conscience, in particular, if submitted to public definition, would be narrowed much more than they are likely ever to be by an assumed power. One of the objections in New England [to the proposed federal Constitution] was, that the Constitution, by prohibiting religious tests, opened a door for Jews, Turks, and infidels."

Madison's letter to Jefferson.

He also regretted what experience has since demonstrated to be true, that where the people or public opinion happens to be against the enforcement of a provision guaranteeing religious freedom, the provision

Proneness of majorities to ignore bills of right.

How declarations of rights are violated.

is likely to be entirely ignored, as has been done in the prosecution of the Seventh-day Adventists in Tennessee and elsewhere.

"Experience," he says, "proves the inefficiency of a bill of rights on those occasions when its control is most needed. Repeated violations of these parchment barriers have been committed by overbearing majorities in every State.

Experience in Virginia.

"In Virginia, I have seen the bill of rights violated in every instance where it has been opposed to a popular current. Notwithstanding the explicit provision contained in that instrument for the rights of conscience, it is well known that a religious establishment would have taken place in that State if the legislative majority had found, as they expected, a majority of the people in favor of the measure. And I am persuaded that if a majority of the people were now of one sect, the measure would still take place, and on narrower ground than was then proposed, notwithstanding the additional obstacle which the law [Jefferson's bill for religious freedom, *ante* page 132] has since created.

Danger of oppression.

"*Wherever the real power in a government lies, there is the danger of oppression.* In our government the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of government contrary to the sense of its constituents, but from acts in which the government is the mere instrument of the major number of the constituents. This is a truth of great importance, but not yet sufficiently attended to. . . . Wherever there is an interest and power to do wrong, wrong will generally be done, and not less readily by a powerful and interested party than by a powerful and interested prince." From a letter to Jefferson, dated New York, October 17th, 1788. "Writings of James Madison," vol. i, pp. 424, 425.

Danger from majorities as well as from monarchies.

The distinction which Madison here makes, and which he so often made, between the government — the agent of the state — and the government as the state itself, or political society, is fully justified. As he says, "This is a truth of great importance, but not yet sufficiently attended to." The power of the former, or government, as commonly understood, is defined strictly by the constitution which creates the agency; and the power or sovereignty of the latter — the state — is, according to Madison, defined by common or natural law, to which sovereignty should conform its acts. He, therefore — like Jefferson, who was a most excellent common-lawyer — places the rights of man, our common-law rights, "beyond the *legitimate* reach of sovereignty *wherever vested or however viewed.*" It is of course true that sovereignty *can* interfere with rights, but such action is not legal. Sovereignty, or the controlling power in a state, is amenable to the laws bringing the state into existence. Hence is the common-law maxim derived, "*Sequi* debit potentia justitiam non praecedere:" *Force* [and hence the controlling power of the state] *ought to follow justice and not to precede it.* Coke's Institutes, 2,454. Justice marks out the way, and according to the common law, force must follow.

RELIGIOUS POLITY OF THE UNITED STATES.

WRITTEN BY THOMAS JEFFERSON TO RABBI M. M. NOAH.[1]

MONTICELLO, May 28, 1818.

Jefferson's letter.

SIR: I thank you for the discourse on the consecration of the synagogue in your city, with which you have been pleased to favor me. I have read it with pleasure and instruction, having learnt from it some valuable facts in Jewish history which I did not know before. Your sect, by its sufferings, has furnished a remarkable proof of the universal spirit of religious intolerance inherent in every sect, *disclaimed by all while feeble, and practised by all when in power.*[2] Our laws have applied the only antidote

Principle underlying religious prosecution.

[1] "Travels," etc., by Mordecai M. Noah (1819); appendix, page 25.

Illustrations of Jefferson's observation.

[2] This is a remarkably true observation, being confirmed by probably every sect having gone through the two stages, having experienced the inconveniences of feebleness and felt the satisfaction of power. Even the sects which have been the most pronounced advocates of religious liberty and individual freedom seem to forget their principles when the religious law does not affect themselves in any way. We will notice, for instance, the Baptists and Presbyterians.

Baptists and religious liberty.

No church in history, perhaps, has done more for religious liberty than the Baptists; no church has so long and so logically upheld the principles of individual freedom in all religious concerns; and no church anywhere remonstrated so earnestly and so effectually against Sunday laws as did the Baptist church of America led by Roger Williams, at the dawning of American history. But during all these years the church was a minority church, was being persecuted by the orthodox cult, and had learned by experience what it was to suffer from unconstitutional religious laws.

Their present position.

But how different to-day! A large element of the ministry of this now powerful church, while lauding William's opposition to religious laws and state-churchism, and taking pride in the magnificent history of their church for century after century, *are now working for some of the same religious laws that they praise their ancestors and the ancienter church for opposing!* It is this remarkable paradox in the history of the religious bodies of the world to which Jefferson refers.

Equality before the law.

to the vice, protecting our religious as they do our civil rights, by putting all men on an equal footing. But more remains to be done; for although we are free by the law, we are not so in practice; public opinion erects itself into an inquisition, and exercises its office with as much fanaticism as fans the flames of an auto de fé.[1] The prejudice still scowling on

Persecution of Presbyterians.

Nor is it substantially different with the Presbyterians. They have had their full share of suffering on account of their principles during the first few centuries. But it was while they had been in the minority that they had felt so severely and so often the iniquitous workings of enforced religious observances, and hence it is that they have been honored for their religious-liberty principles. No papers in history have been more admired than the forcible memorials which they sent up to the Virginia Assembly in the days of the American confederacy, opposing religious legislation of any kind to any extent. These memorials were partly instrumental in establishing religious liberty in Virginia, and Jefferson and Madison always valued the assistance which was afforded them by these churches in their religious-liberty work.

Persecuted in turn become persecutors.

But when another generation arises which has not felt the anti-christian hand of persecution, they seem to forget their foundation principles and join with the clamorers for religious laws. Thus it has ever been. The lessons of the past are soon forgotten, fundamental principles are lost sight of, and laws are demanded which contravene these principles, enter the realm of conscience, and, in the hands of the bigot, result in persecution. Thus church and state are again united, and history is repeated. It should never be forgotten that extensive religious persecution can never be carried on except where church and state are united. Laws and the power of the state backing them are essential to this. Remove the means for persecuting, and persecution will cease. Abolish religious laws, and the instrument by which persecution is possible will be destroyed. The evil intent and evil design may remain in the bigot, but without instruments of persecution he is powerless, and persecution is therefore an impossibility even though the would-be persecutor still dwell in our midst.

The King case.

[1] A striking fulfillment of this occurred in the celebrated King case. See page 676. King was arrested and imprisoned for Sunday work contrary to both statutory and common law; and yet when the case came up to the federal court, he was not released, although the judge admitted that he was "wrongfully convicted," a new ruling, etc. (see page 706), showing that public sentiment and intolerant feelings can very easily override the law where such sentiment is strong. Thus we see how much farther the intolerant will go when they have the law to help them in their work of persecution.

your section of our religion, although the elder one, cannot be unfelt by yourselves; it is to be hoped that individual dispositions will at length mold themselves to the model of the law, and consider the moral basis on which all our religions rest as the rallying point which unites them in a common interest; while the peculiar dogmas branching from it are the exclusive concern of the respective sects embracing them, and no rightful subject of notice to any other. Public opinion needs reformation on that point, which would have the further happy effect of doing away with the hypocritical maxim of "intus ut lubet, foris ut moris.[1]" Nothing, I think, would be so likely to effect this, as to your sect particularly, as the more careful attention to education which you recommend, and which, placing its members on the equal and commanding benches of science, will exhibit them as equal objects of respect and favor. I salute you with great respect and esteem.

Hope that dispositions will conform to law.

A false maxim.

[1] "At home as one chooses, abroad according to public opinion." This idea excludes the law altogether, and instead of "individual dispositions molding themselves to the model of the law," as Jefferson desired, the law is set aside, and whim and caprice take its place. This very idea is the underlying inspiration of all persecution and has ever been the archenemy of all progress. Every advancement that has been made in legal procedure and in the strengthening of our legal institutions for the enforcement of justice have been made in opposition to this maxim and in spite of it.

The inspiration of all persecution.

Instead of "At home as one chooses and abroad according to public opinion" it should be, "At home live according to the law and abroad do not violate it." All men are thus, as Jefferson would have them, "put on an equal footing," for the law is itself equality. This idea is in striking contrast with the idea that the laws are made for the many and that an individual's happening to be in the minority is his misfortune. Before the law the Christian, the Jew, the Mahometan, the infidel, and the atheist, are the same. The law makes no difference between persons because of any opinion that he may hold, and if he respects the temporal rights of others, the law demands for him the fullest freedom that the world can give. Law, justice, equality are not meaningless words, not high-sounding terms for the ornamentation of books of law, but they are words fraught with a world of meaning to him who would make the subject his own and give practical effect to the essential idea thereof.

A correct maxim.

THE JEWS IN AMERICA.

WRITTEN BY EX-PRESIDENT ADAMS TO M. M. NOAH.[1]

QUINCY, July 31, 1818.

Liberality of Jewish ideas.

SIR: Accept my best thanks for your polite and obliging favor of the 24th, and especially for the discourse inclosed. I know not when I have read a more liberal or a more elegant composition.

You have not extended your ideas of the right of private judgment and the liberty of conscience, both in religion and philosophy, farther than I do. Mine are limited only by morals and propriety.

Character of Jews.

I have had occasion to be acquainted with several gentlemen of your nation, and to transact business with some of them, whom I found to be men of as liberal minds, as much honor, probity, generosity, and good breeding as any I have known in any sect of religion or philosophy.

I wish your nation may be admitted to all the privileges of citizens in every country of the world. This country has done much. I wish it may do more; and annul every narrow idea in religion, government, and commerce.[2] Let the wits joke, the philosopher sneer! What then? It has pleased the providence of the First Cause, the universal cause, that Abraham should give religion, not only to the Hebrews, but to Christians and Mahometans,—the greatest part of the civilized world.

Desire for extension of liberality.

[1] From "Travels," etc., by Mordecai M. Noah (1819); appendix, page 26.

[2] This desire on the part of Adams was shared quite generally by our early statesmen, and the writings of each of our first five presidents abound with expressions showing their repeated efforts in the way of placing all religions and all professors of religion, popular or not popular, on an absolute equality before the law. This letter of Adams is but one among many similar ones.

THE RIGHTS OF JEWS.

WRITTEN BY JAMES MADISON TO DR. DE LA MOTTA.[1] August, 1820.

MONTPELIER, August, 1820.

SIR: . . . The history of the Jews must forever be interesting. The modern part of it is, at the same time, so little generally known, that every ray of light on the subject has its value. History of Jews interesting.

Among the features peculiar to the political system of the United States, is the perfect equality of rights which it secures to every religious sect. And it is particularly pleasing to observe in the good citizenship of such as have been most distrusted and Equality of all sects peculiar to American political system.

[1] "Writings of James Madison," volume iii, pages 178, 179. Special force must ever attach to the words of Madison, and his declaration of the "perfect equality" of sectarians of every sort before the law must always stand as an authoritative commentary upon the character of our law. But the equality of the law does not begin with our constitution nor with the beginning of our government. It goes back to the beginning of our law, ere the Saxon had heard of Britain and before the Latins were to them a people known. True, it has taken ages for the law to conform procedure to its principles, and in this, America has played a most important part; but it must ever be remembered that it has been done by means of a principle older than America, older than Britain, older than even the ancient city of Rome itself. These very principles that have made America the most blessed among the nations of the earth were born in prehistoric antiquity, were nurtured in the woodlands of northern Europe, spent their youth in the isle of Britain, and have attained a noble manhood in America, potent now to bless the world with freedom and break the shackles of a long enslaved humanity. The law is perfect. That justice is not always done is not the fault of law but of the agencies by which the law is enforced. Herein is where justice often miscarries. The administrators of the law are imperfect. What *is* done in the law's name is not what *should be* done. Law is the straight line of equality lying between absolutism and anarchy. Neither of these phases of lawlessness recognizes the authority of a uniform law, but presumes to act according to its own will, irrespective of all else, the sum and substance of all violation of law. Political advancement means the growing recognition of law by the individual, and a corresponding self-control answering to the law's demands. Beginnings of our law. Nature of our law.

Success of our secular principles.

oppressed elsewhere a happy illustration of the safety and success of this experiment of a just and benignant policy. Equal laws, protecting equal rights, are found, as they ought to be presumed, the best guarantee of loyalty and love of country; as well as best calculated to cherish that mutual respect and good-will among citizens of every religious denomination which are necessary to social harmony, and most favorable to the advancement of truth. The account you give of the Jews of your congregation brings them fully within the scope of these observations.[1]

Jews included.

This letter important.

[1] This letter is an important commentary on the question of how far religious equality extends; — whether to the sects of Christianity alone, or to all religions. Mr. Madison says: "Among the features peculiar to the political system of the United States, is the *perfect equality of rights* which it secures to *every religious sect;*" and this statement coming, as it does, from the principal framer of the instrument which is the embodiment of our political system, should decide the question positively and forever. That religious equality is not restricted to Christian sects, is also proved by the statement that the Jews come "*fully within the scope of these observations;*" for this is a specific assertion that our institutions intended that "perfect equality" should extend to the Jews — a sect that even regards the Author of Christianity as an impostor.

Constitutional equality of all sects.

Jews no exception.

Sunday laws incompatible with religious equality.

The "perfect equality" of Jews and Christians introduces the question of Sunday legislation. For, when laws are made enforcing the distinctive institutions of the Christian religion, then is the principle of religious equality set aside. The Jew has the same right to work on the day which the Christian regards as the Sabbath, as has the Christian to work on the day which the Jew regards as the Sabbath; — the right inheres in both; for no power on earth has the right to compel any individual, no matter what he believes, to observe in any way whatever the religious institutions of any other individual or set of individuals. This was the principle recognized in the enactment of the first amendment to the Constitution: "Congress shall make *no law* respecting an establishment of religion, or prohibiting the free exercise thereof." Hence, to compel any one to observe the Sabbath of the Christian religion, or of any other religion, is directly contrary to our constitutional principles, and subversive of American institutions. Religious liberty is liberty to differ in anything and everything, — not liberty to differ *only in what the dominant party permits us to differ;* for in this idea there is nothing incompatible with the most veritable despotism.

Congress prohibited from enacting religious laws.

What constitutes religious liberty.

CIVIL GOVERNMENT AND RELIGION.

WRITTEN BY JAMES MADISON TO EDWARD LIVINGSTON.[1] July 10, 1822.

MONTPELIER, July 10, 1822.

DEAR SIR: . . . I observe with particular pleasure the view you have taken of the immunity of religion from civil jurisdiction, in every case where it does not trespass on private rights or the public peace. This has always been a favorite principle with me; *and it was not with my approbation that the deviation from it took place in Congress, when they appointed chaplains, to be paid from the national treasury.* It would have been a much better proof to their constituents of their pious feeling if the members had contributed for the purpose a pittance from their own pockets. As the precedent is not likely to be rescinded, the best that can now be done may be to apply to the Constitution the maxim of the law, *de minimus non curat.*

Immunity of religion from civil jurisdiction.

Madison disapproved of deviating from our principles.

There has been another deviation from the strict principle in the executive proclamations of fasts and festivals,[2] so far, at least, as they have spoken the language of *injunction*, or have lost sight of the equality of *all* religious sects in the eye of the Constitution. Whilst I was honored with the executive trust, I found it necessary on more than one occasion to follow the example of predecessors. But I was always careful to make the proclamations absolutely indiscriminate, and merely recommendatory; or, rather, mere *designations* of a day on which all who thought proper might *unite* in consecrating it to religious purposes, *according to their own faith*

Another bad precedent.

[1] "Writings of James Madison," volume iii, page 273 *et seq.*

[2] For Jefferson's views on the appointment of fasts and festivals, see "Religious Proclamations Unconstitutional," *ante* pages 174, 175.

and forms. In this sense, I presume, you reserve to the government a right to *appoint* particular days for religious worship. I know not what may be the way of thinking on this subject in Louisiana. I should suppose the Catholic portion of the people, at least, as a small and even unpopular sect in the United States, *would rally*, as they did in Virginia when religious liberty was a legislative topic, *to its broadest principle.* Notwithstanding the general progress made within the two last centuries in favor of this branch of liberty, and the full establishment of it in some parts of our country, *there remains in others a strong bias towards the old error, that without some sort of alliance or coalition between government and religion, neither can be duly supported. Such, indeed, is the tendency to such a coalition, and such its corrupting influence on both the parties, that the danger cannot be too carefully guarded against.* And in a government of opinion, like ours, the only effectual guard must be found in the soundness and stability of the general opinion on the subject. *Every new and successful example, therefore, of a perfect separation between ecclesiastical and civil matters, is of importance;* and I have no doubt that every new example will succeed, as every past one has done, *in showing that religion and government will both exist in greater purity the less they are mixed together.* It was the belief of all sects at one time that the establishment of religion by law was right and necessary; that the true religion ought to be established in exclusion of every other; and that the only question to be decided was, which was the true religion. The example of Holland proved that a toleration of sects dissenting from the established sect was safe, and even useful. The example of the colonies, now States, which rejected religious establishments altogether, proved that all sects might be

Madison would think that Catholics would assert their rights.

Still a strong prejudice in favor of church and state.

Danger cannot be too carefully guarded against.

Every new application is of importance.

Absolute separation better for both.

The old ideas.

Toleration beneficial.

safely and advantageously put on a footing of *equal and entire freedom;* and a continuance of their example since the Declaration of Independence has shown that its success in colonies was not to be ascribed to their connection with the parent country. If a further confirmation of the truth could be wanted, it is to be found in the examples furnished by the States which have abolished their religious establishments. I cannot speak particularly of any of the cases excepting that of Virginia, where it is impossible to deny that religion prevails with more zeal and a more exemplary priesthood than it ever did when established and patronized by public authority. We are teaching the world the great truth that governments do better without kings than with them. The merit will be doubled by the other lesson: that religion flourishes in greater purity without, than with, the aid of government.[1]

Absolute religious liberty better.

Beneficial effects in Virginia.

"Liberty enlightening the world."

My pen, I perceive, has rambled into reflections for which it was not taken up. I recall it to the proper object, of thanking you for your very interesting pamphlet, and of tendering you my respects and good wishes.

[1] In the foregoing letter Madison shows his progressive as well as his liberal spirit. He says: "*Every new and successful example, therefore, of a perfect separation between ecclesiastical and civil matters, is of importance;* and I have no doubt that every *new example* will succeed, as every past one has done, *in showing that religion and government will both exist in greater purity the less they are mixed together.*" How different is this from the constant opposition of so many Christians to-day *against* every application of the doctrine. If religion is not taught in the schools, the cry is raised that the children will go to ruin; if state chaplains are not hired, the early destruction of the state is predicted; if Sunday laws are not enforced, anathemas are pronounced against the whole nation; — and all this, too, when religion in America has prospered better — far better! — under the secular principles of government than ever it did in any nation with all its religious teaching by the state. The words of General Grant should ever be remembered by the American people. "Keep church and state forever separate."

Madison's progressive spirit.

Contrast with other Christians.

Prosperity of religion in our secular government.

RELIGION IN PUBLIC SCHOOLS.

March 19, 1823. WRITTEN BY JAMES MADISON TO EDWARD EVERETT.[1]

MONTPELIER, March, 19, 1823.

Religion in the schools.

DEAR SIR: . . . A university with sectarian professorships becomes, of course, a sectarian monopoly; with professorships of rival sects, it would be an arena of theological gladiators. Without any such professorships, it may incur, for a time at least,

False imputations against secular schools.

the *imputation of irreligious tendencies, if not designs. The last difficulty was thought more manageable than either of the others.* On this view of the subject, there seems to be no alternative but between a public university without a theological professorship, and sectarian seminaries without a university.

A futile project.

I recollect to have seen, many years ago, a project of a prayer, by Governor Livingston, father of the present Judge, intended to comprehend and conciliate college students of every Christian denomination, by a form composed wholly of texts and phrases of Scripture. If a trial of the expedient was ever made, it must have failed, notwithstanding its winning aspect, from the single cause that many sects reject all set forms of worship.

Christians slow to see the benefit of secular schools

The difficulty of reconciling the Christian mind to the absence of a religious tuition from a university established by law, and at the common expense, is probably less with us than with you. The settled

Religion wholly exempt from cognizance of government.

opinion here is that *religion is essentially distinct from civil government, and exempt from its cognizance; that a connection between them is injurious to both;* that there are causes in the human breast which insure the perpetuity of religion without the

All sects have equal rights.

aid of the law; that rival sects, *with equal rights,*

[1] "Writings of James Madison," volume iii, page 305 *et seq.*

exercise mutual censorships in favor of good morals; that if new sects arise with absurd opinions or overheated imaginations, the proper remedies lie in time, forbearance, and example; that a legal establishment of religion without a toleration could not be thought of, and with a toleration, is no security for public quiet and harmony, but rather a source itself of discord and animosity; and, finally, that these opinions are supported by experience, which has shown that every relaxation of the alliance between law and religion, from the partial example of Holland to its consummation in Pennsylvania, Delaware, New Jersey, etc., has been found as safe in practice as it is sound in theory. Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of Independence it was left, with all other sects, to a self-support. And no doubt exists that there is much more of religion among us now than there ever was before the change, and particularly in the sect which enjoyed the legal patronage. This proves rather more than that the law is not necessary to the support of religion.

Mutual censorship beneficial

Toleration a source of animosity.

Theory of entire separation of religion and law sound.

Human laws not necessary to support of religion.

With such a public opinion, it may be expected that a university, with the feature peculiar to ours, will succeed here if anywhere. Some of the clergy did not fail to arraign the peculiarity; but it is not improbable that they had an eye to the chance of introducing their own creed into the professor's chair. A late resolution for establishing an Episcopal school within the College of William and Mary, *though in a very guarded manner*, drew immediate animadversions from the press, which, if they have not put an end to the project, are a proof of what would follow such an experiment in the university of the State, endowed and supported, as this will be, altogether by the public authority and at the common expense.

Clergy arraigned the secular schools.

Probable reason.

. . . . . .

CIVIL LAWS AGAINST BLASPHEMY.

Jan. 23, 1825.

WRITTEN BY JOHN ADAMS TO THOMAS JEFFERSON.[1]

QUINCY, January 23, 1825.

MY DEAR SIR: We think ourselves possessed, or at least we boast that we are so, of liberty of conscience on all subjects, and of the right of free inquiry and private judgment in all cases, and yet how far are we from these exalted privileges in fact. There exists, I believe, throughout the whole Christian world, a law which makes it blasphemy to deny, or to doubt, the divine inspiration of all the books of the Old and New Testaments, from Genesis to Revelations. In most countries of Europe it is punished by fire at the stake, or the rack, or the wheel. In England itself, it is punished by boring through the tongue with a red hot poker. In America it is not much better;[2] even in our Massachusetts, which,

We boast of entire liberty of conscience.

How far we are from it.

Punishment in Europe.

Punishment in America.

[1] "Works of Thomas Jefferson," volume vii, pages 396, 397.

Adams's statement verified.

[2] The truth of Adams's statement is proved by the following law, which, legally, is in force in the very capital of our nation to-day, — although, of course, it is a dead letter. It was a Maryland law enacted in 1723, and, with the rest of the laws of Maryland, was in 1801 adopted as a law in the District of Columbia by the following act of Congress:

An act of Congress.

"SECTION 92. The laws of the State of Maryland not inconsistent with this title, as the same existed on the twenty-seventh day of February, 1801, except as since modified or repealed by Congress or by authority thereof, or until so modified or repealed, continue in force within the District." "Revised Statutes, District of Columbia," page 9.

The first section of the act, entitled, "An act to punish blasphemers, swearers, drunkards, and Sabbath-breakers," etc., reads as follows:

Law against blasphemy.

". . . That if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blaspheme, or curse God, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity, the Father, Son, and Holy Ghost, or the Godhead of any of the three persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity, or any of the persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offense, be bored through the tongue and

Boring through the tongue.

I believe, upon the whole, is as temperate and moderate in religious zeal as most of the States, a law was made in the latter end of the last century repealing the cruel punishments of the former laws, but substituting fine and imprisonment upon all those blasphemies upon any book of the Old Testament or the New. Now, what free inquiry, when a writer must surely encounter the risk of fine or imprisonment for adducing any arguments for investigation into the divine authority of those books? Who would run the risk of translating Volney's Recherches Nouvelles? Who would run the risk of translating Dapin's? But I cannot enlarge upon this subject, though I have it much at heart. I think such laws a great embarrassment, great obstructions to the improvement of the human mind. Books that cannot bear examination, certainly ought not to be established as divine inspiration by penal laws. It is true, few persons appear desirous to put such laws into execution, and it is also true that some few persons are hardy enough to venture to depart from them; but as long as they continue in force as laws, the human mind must make an awkward and clumsy progress into its investigations. I wish they were repealed. The substance and essence of Christianity, as I understand it, is eternal and unchangeable, and will bear examination forever; but it has been mixed with extraneous ingredients, which, I think, will not bear examination, and they ought to be separated.

The laws in Massachusetts.

Free inquiry proscribed.

Subject dear to Adams.

They retard progress of humanity.

Their repeal desired.

Christianity will bear examination forever.

fined twenty pounds sterling; . . . and that for the second offense, the offender being therefore convict as aforesaid, shall be stigmatized by burning in the forehead with the letter B and fined forty pounds sterling; . . . and that for the third offense, the offender being convict as aforesaid, shall suffer death without the benefit of the clergy." "Laws of the District of Columbia," page 136 *et seq.*

Burning on forehead.

Death for third offense

As incompatible as they are with religious equality, several of the States have similar laws, with the penalty somewhat modified, and now and then attempts are made to enforce them.

CHRISTIANITY AND THE COMMON LAW.

WHETHER CHRISTIANITY IS A PART OF THE COMMON LAW.[1]

A. D. 1458.

Statement of the circumstances causing the litigation during which Prisot's statement was made.

In *quare impedit*, in Common Bench, [Year Book] 34th year Henry VI, folio 38, the defendant, bishop of Lincoln, pleads that the church of the plaintiff became void by the death of the incumbent; that the plaintiff and I. S., each pretending a right, presented two several clerks; that the church being thus rendered litigious, he was not obliged, by the ecclesiastical law, to admit either, until an inquisition *de*

[1] Appendix to "Reports of Cases Determined in the General Court of Virginia, from 1730 to 1740 and from 1768 to 1772, by Thomas Jefferson" (Charlottesville, F. Carr & Co., 1829), page 137 *et seq.* In the preface to his reports (page vi), Jefferson says:

Most remarkable instance of judicial legislation in history.

"I have added, also, a disquisition of my own on the most remarkable instance of judicial legislation that has ever occurred in English jurisprudence, or, perhaps, in any other. It is that of the adoption in mass of the whole code of another nation, and its incorporation into the legitimate system, by usurpation of the judges alone, without a particle of legislative will having ever been called on, or exercised towards its introduction or confirmation."

And in a letter to Edward Everett, dated at Monticello, October 15, 1824, he wrote as follows:

Thoroughness of Jefferson's study.

"I do not remember the occasion which led me to take up this subject, while a practitioner of the law. But I know I went into it with all the research which a very copious law library enabled me to indulge; and I fear not for the accuracy of any of my quotations. The doctrine might be disproved by many other and different topics of reasoning; but having satisfied myself of the origin of the forgery, and found how, like a rolling snow-ball, it had gathered volume, I leave its further pursuit to those who need further proof, and perhaps I have already gone further than the feeble doubt you expressed might require." "Works of Thomas Jefferson," volume vii, page 383.

Jefferson was an eminent common-law scholar and was conversant with the Mirrour of Justices, Henri de Bracton, Fleta and Britton, Glanvil, Saint Germain, Fortescue Aland, and all the older writings on the common law, and therefore was naturally a competent critic upon the subject in hand. Without reading these older writers one can hardly

jure patronatus, in the ecclesiastical court; that, by the same law, this inquisition was to be at the suit of either claimant, and was not *ex officio* to be instituted by the bishop, and at his proper costs; that

Value of old writings.

get a good understanding of what the real common-law idea is. The modern conception of it as the customs of England is far from the truth, as a quotation or two from the older writings will readily show. Coke, for instance, the greatest authority on the law that ever adorned the English bench, is reported in Brownlow (printed in London, 1652) as follows:

"Coke, Chief Justice, agreed, and he said that Fortescue and Littleton, *and all others agreed*, that the common law consists of three parts:

"*First*, common law.

"*Secondly*, statute law. . . .

"*Third*, custom. . . .

Authority of common law.

"But the common law corrects, allows, and disallows both statute law and custom; for if there be repugnancy in statute, or unreasonableness in custom, the common law disallows or rejects it, as it appears by Doctor Bonham's case, and 8 Coke, 27 Henry VI, annuity." Volume 2, page 198. See also Colledge of Physitian's case, page 265, which declares a statute void on the ground that it was "made against law and right."

The same division of the law of England is made in the preface to Hughes's edition (1768) of "The Mirrour of Justices: Written in the Old French long before the Conquest." Says the writer:

"The temporal laws of this kingdom may be divided into three parts:

"*Firstly*, The general or common law.

"*Secondly*, The customary law.

"*Thirdly*, Statute or Parliament laws."

Custom must conform to justice.

This is the old view of the common law, and custom was regarded as law simply in the sense that if there had been a uniform custom in regard to a given subject from time immemorial, that was good evidence that the given custom accorded with the law. Custom is not the law but it is very good evidence of what the law is; so customary law is that part of the law *proved* by custom. So with statute law: when a legislative body has passed upon a given question of law and declared that it is law, that is evidence par excellence of what the law is. But neither statute nor custom prove the law absolutely. They are simply the best of evidence. But if even the best of evidence is unreasonable or repugnant, it must be set aside. Therefore, Coke, following the common-law idea, says: "The common law corrects, allows, and disallows both statute law and custom."

Statement of circumstances.

neither party had desired such an inquisition; that six months passed; whereon it belonged to him of right to present as on a lapse, which he had done. The plaintiff demurred.

A question was, How far the ecclesiastical law was to be respected in this matter by the common law court. And Prisot, chapter 5, in the course of his argument uses this expression: "A tiels leis que ils de seint eglise ont en *ancien scripture*, covient à nous à donner credence; car ceo common ley sur quel touts manners leis sont fondés: et auxy, sin, nous sumus obligés de conustre lour ley de seint eglise: et semblablement ils sont obligés de conustre nostre ley; et, sin, si poit apperer or à nous que l'evesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy," etc.[1]

The expression upon which is based the claim that "Christianity is part of the common law."

Translation.

[1] "To such laws as those of holy church have in ancient writing, it is proper for us to give credence, for it is common law on which all manners of laws are founded; and also, if not, we are obliged to know the law of their holy church [ecclesiastical law]; and, likewise, they are obliged to know our law; and, if not, if it appears to us that the bishop has done as an ordinary would do in such case, then we should adjudge it good, otherwise not," etc.

Jefferson says: "The reports in the Year Books were taken very short. The opinions of the judges were written down sententiously, as notes or memoranda, and not with all the development which they probably used in delivering them. Prisot's opinion, to be fully expressed, should be thus paraphrased: 'To such laws as those of holy church have recorded and preserved in their ancient books and writings, it is proper for us to give credence; for so is, or so says the common law, or law of the land, on which all manner of other laws rest for their authority, or are founded; that is to say, the common law, or the law of the land common to us all, and established by the authority of us all, is that from which is derived the authority of all other special and subordinate branches of law, such as the canon law, law merchant, law maritime, law of gavelkind, borough-English, corporation laws, local customs and usages, to all of which the common law requires its judges to permit authority in the special or local cases belonging to them. The evidence of these laws is preserved in their ancient treatises, books, and writings, in like manner as our own common law itself is known, the text of its original enactments having been long lost, and its

Expression paraphrased.

It does not appear that judgment was given. Year Book, *ubi supra*, third chapter; Fitzherbert's Abridgment, *quare impedit*, 89; Brooke's Abridgment, *quare impedit*, 12.

Judgment not recorded.

Finch misstates this in the following manner: "To such laws of the church as have warrant in *Holy Scripture*, our law giveth credence," and cites the above case, and the words of Prisot in the margin. Finch's law, book 1, chapter 3, published 1613. Here we find "ancien scripture" [*ancient writing*] converted into "Holy Scripture," whereas it can only mean the *ancient written* laws of the church. It cannot mean the Scriptures, — *First*, Because the term "ancien scripture" must then be understood as meaning the Old Testament in contradistinction to the New, and to the exclusion of that; which would be absurd and contrary to the wish of those who cite this passage to prove that *the Scriptures, or Christianity, is a part of the com- [*138]

Finch's misstatement of Prisot's expression.

The words "ancien scripture" converted into "Holy Scripture."

Meaning of Prisot's expression.

The absurdity involved in the claim.

substance only preserved in ancient and traditionary writings. And if it appears, from their ancient books, writings, and records, that the bishop in this case, according to the rules prescribed by these authorities, has done what an ordinary would have done in this case, then we should adjudge it good, otherwise not.' To decide this question, they would have to turn to the ancient writings and records of the canon law, in which they would find evidence of the laws of advowsons, *quare impedit*, the duties of bishops and ordinaries, for which terms Prisot could never have meant to refer them to the Old or New Testament, *les saincts scriptures*, where surely they would not be found. A license which should permit 'ancien scripture' to be translated 'Holy Scripture,' annihilates at once all the evidence of language. With such a license, we might reverse the sixth commandment into 'thou shalt not omit murder.' It would be the more extraordinary in this case, when the mistranslation was to effect the adoption of the whole code of the Jewish and Christian laws into the text of our statutes, to convert religious offense into temporal crimes, to make the breach of every religious precept a subject of indictment, submit the question of idolatry, for example, to the trial of a jury, and to a court, its punishment, to the third and fourth generation of the offender. Do we allow our judges this lumping legislation?" "Works of Thomas Jefferson," volume vii, pages 381, 382.

Nothing in the Bible on the question under consideration.

Consequence of Prisot's mistranslation.

Prisot's expression.

mon law. *Second*, Because Prisot says: "Ceo (est) common ley sur quel touts manners leis sont fondés."[1] Now it is true that the ecclesiastical law, so far as admitted in England, derives its authority from the common law. But it would not be true that the Scriptures so derive their authority. *Third*, The whole case and arguments show that the question was, How far the ecclesiastical law in general should be respected in a common law court. And in Brooke's abridgment of this case, Littleton says: "Les juges del common ley prendra conusans quid est *lex ecclesiæ*, vel admiralitatis, et trujus modi."[2] *Fourth*, Because the particular part of the ecclesiastical law then in question, viz.: the right of the patron to present to his advowson, was not founded on the law of God, but subject to the modifications of the lawgiver; and so could not introduce any such general position as Finch pretends.

Wingate formulates Finch's false quotation into a maxim of law.

Yet Wingate (in 1658) thinks proper to erect this false quotation into a maxim of the common law, expressing it in the very words of Finch, but citing Prisot. Wingate's Maxims, 3. Next comes Sheppard (in 1675), who states it in the same words of Finch, and quotes the Year Book, Finch, and Wingate. 3 Sheppard's Abridgment, title "Religion." In the case of the King *v.* Taylor, Sir Matthew Hale lays it down in these words: "Christianity is parcel of the laws of England." 1 Ventris's Reports, 293; 3 Keble's Reports, 607. But he quotes no authority. It was from this part of the supposed common law that he derived his authority for burning witches. So strong was this doctrine become in 1728, by additions and repetitions from one another, that in the case of the King *v.* Woolston, the court would not suffer it to

Sheppard's statement.

Sir Matthew Hale's expression.

Translations.

[1] "It is common law, on which all manners of laws are founded."

[2] "The judges of the common law will take cognizance of what is the law of the church [ecclesiastical law], or of the admiralty, and of this sort."

be debated, whether to write against Christianity was punishable in the temporal courts at common law, saying it had been so settled in Taylor's case, *ante*, 2 Strange's Reports, 834; therefore, Wood, in his Institutes, lays it down that all blasphemy and profaneness are offenses by the common law, and cites Strange, *ubi supra*, Wood, 409. And Blackstone (about 1763) repeats, in the words of Sir Matthew Hale, that "Christianity is part of the laws of England," citing Ventris and Strange, *ubi supra*, 4 Blackstone's Commentaries, 59. Lord Mansfield qualified it a little by saying, in the case of the Chamberlain of London *v.* Evans, 1767, that "the essential principles of revealed religion are part of the common law." But he cites no authority, and leaves us at our peril to find out what, in the opinion of the judge, and according to the measure of his foot or his faith, are those essential principles of revealed religion obligatory on us as a part of the common law.

The question not allowed to be debated.

Wood lays it down that all blasphemy and profaneness are offenses by the common law.

Blackstone repeats Matthew Hale's expression.

Mansfield's statement.

No authority cited.

Thus we find this string of authorities, when examined to the beginning, all hanging on the same hook, a perverted expression of Prisot, or on nothing. For they all quote Prisot, or one another, or nobody. Thus Finch quotes Prisot; *Wingate also; Sheppard quotes Prisot, Finch, and Wingate; Hale cites nobody; the court in Woolston's case cite Hale; Wood cites Woolston's case; Blackstone that and Hale; and Lord Mansfield, like Hale, ventures it on his own authority. In the earlier ages of the law, as in the Year Books, for instance, we do not expect much recurrence to authorities by the judges, because in those days there were few or none such made public. But in later times we take no judge's word for what the law is, further than he is warranted by the authorities he appeals to. His decision may bind the un-

Summary of authorities.

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Decisions of judges cannot alter the law.

fortunate individual who happens to be the particular subject of it; but it cannot alter the law. Although the common law be termed "*lex non scripta*," yet

Hale's comments on the common law.

the same Hale tells us, "When I call those parts of our laws *leges non scriptæ*, I do not mean as if all those laws were only oral, or communicated from the former ages to the latter merely by word. For all these laws have their several monuments in writing, whereby they are transferred from one age to another, and without which they would soon lose all kind of certainty. They are for the most part extant in records of pleas, proceedings, and judgments, in books of reports and judicial decisions, in tractates of learned men's arguments and opinions, preserved from ancient times and still extant in writing." Hale's Common Law, 22.

Authorities for what is common law may, therefore, be as well cited, as for any part of the *lex scripta;* and there is no better instance of the necessity of

Judges should be held to a declaration of their authorities.

holding the judges and writers to a declaration of their authorities than the present, where we detect them endeavoring to make law where they found none, and to submit us, at one stroke, to a whole system, no particle of which has its foundation in the common law, or has received the "esto" of the legislator. For we know that the common law is that system of law which was introduced by the Saxons on their settlement in England,[1] and altered,

Origin of the common law.

[1] "Our ancient lawyers, and particularly Fortescue (chapter 17), insist with abundance of warmth that these customs are as old as the primitive Britons, and continued down, through the several mutations of government and inhabitants, to the present time, unchanged and unadulterated." Blackstone's "Commentaries on the Laws of England," introduction, page *64. Blackstone, however, assures us that these customs were influenced by the customs of adventitious nations intermixing with the Saxons, and that Fortescue's statement "ought only to signify, as the truth seems to be, that there never was any formal exchange of one system of laws for another."

from time to time, by proper legislative authority, from that time to the date of Magna Charta, which terminates the period of the common law, or *lex non scripta*, and commences that of the statute law, or *lex scripta*. This settlement took place about the middle of the fifth century, but Christianity was not introduced till the seventh century; the conversion of the first Christian king of the Heptarchy having taken place about the year 598, and that of the last about 686. Here, then, was a space of two hundred years, during which the common law was in existence, and Christianity no part of it. If it ever, therefore, was adopted into the common law, it must have been between the introduction of Christianity and the date of Magna Charta. But of the laws of this period we have a tolerable collection by Lambard and *Wilkins, probably not perfect; but neither very defective; and if any one chooses to build a doctrine on any law of that period, supposed to have been lost, it is incumbent on him to prove it to have existed, and what were its contents. These were so far alterations of the common law, and became themselves a part of it, but none of these adopt Christianity as a part of the common law. If, therefore, from the settlement of the Saxons to the introduction of Christianity among them, that system of religion could not be a part of the common law, because they were not yet Christians, and if, having their laws from that period to the close of the common law, we are able to find among them no such act of adoption, we may safely affirm (though contradicted by all the judges and writers on earth) that Christianity neither is, nor ever was, a part of the common law.

Alterations of the common law.

Termination of common-law period.

Introduction of Christianity into England.

If adopted into the common law, it must have been previous to date of Magna Charta.

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Not so adopted.

Hence, Christianity neither is, nor ever was, a part of the common law.

Another cogent proof of this truth is drawn from the silence of certain writers on the common law. Bracton gives us a very complete and scien-

Silence another proof.

Bracton's treatise.

tific treatise of the whole body of the common law. He wrote this about the close of the reign of Henry III, a very few years after the date of Magna Charta. We consider this book as the more valuable, as it was written about the time which divides the common and statute law, and therefore gives us the former in its ultimate state. Bracton, too, was an ecclesiastic, and would certainly not have failed to inform us of the adoption of Christianity as a part of the common law, had any such adoption ever taken place. But no word of his, which intimates anything like it, has ever been cited. Fleta and Britton, who wrote in the succeeding reign (of Edward I), are equally silent. So also is Glanvil, an earlier writer than any of them (to wit: *tempore* Henry II), but his subject perhaps might not have led him to mention it. It was reserved then for Finch, five hundred years after, in the time of Charles II, by a falsification of a phrase in the Year Book, to open this new doctrine, and for his successors to join full-mouthed in the cry, and give to the fiction the sound of fact. Justice Fortescue Aland, who possessed more Saxon learning than all the judges and writers before mentioned put together, places this subject on more limited ground. Speaking of the laws of the Saxon kings, he says: "The ten commandments were made part of their law, and consequently were *once* part of the law of England; so that to break any of the ten commandments was then esteemed a breach of the common law of England; and why it is not so now, perhaps it may be difficult to give a good reason." Preface to Fortescue's reports, xvii. The good reason is found in the denial of the fact.

A valuable book.

No intimation that Christianity was a part of common law.

Fleta and Britton equally silent.

Glanvil also silent.

Fortescue's statement of the question.

Falsification of Alfred's laws.

Houard, in his Coutumes Anglo-Normandes, 1, 87, notices the falsification of the laws of Alfred by prefixing to them four *chapters of the Jewish law.

[*141]

to wit: the twentieth, twenty-first, twenty-second, and twenty-third chapters of Exodus, to which he might have added the fifteenth of the Acts of the Apostles, verses 23 to 29, and precepts from other parts of the Scripture. These he calls a *hors d'œuvre* of some pious copyist. This awkward monkish fabrication makes the preface to Alfred's genuine laws stand in the body of the work, and the very words of Alfred himself prove the fraud; for he declares in that preface that he has collected these laws from those of Ina, of Offa, Aethelbert, and his ancestors, saying nothing of any of them being taken from the Scripture. It is still more certainly proved by the inconsistencies it occasions. For example, the Jewish legislator, Exodus xxi, 12, 13, 14 (copied by the pseudo-Alfred, section 13), makes murder, with the Jews, death. But Alfred himself, laws, xxvi, punishes it by a fine only, called a weregild, proportioned to the condition of the person killed. It is remarkable that Hume (appendix 1 to his History) examining this article of the laws of Alfred, without perceiving the fraud, puzzles himself with accounting for the inconsistency it had introduced. To strike a pregnant woman so that she die, is death by Exodus xxi, 22, 23, and pseudo-Alfred, section 18; but by the laws of Alfred, ix, the offender pays a weregild for both the woman and child. To smite out an eye or a tooth, Exodus xxi, 24 to 27, pseudo-Alfred, sections 19, 20, if of a servant by his master, is freedom to the servant; in every other case, retaliation. But by Alfred's laws, xi, a fixed indemnification is paid. Theft of an ox, or a sheep, by the Jewish law, Exodus xxii, 1, was repaid fivefold for the ox and fourfold for the sheep; by the pseudograph, section 24, double for the ox, and fourfold for the sheep; but by Alfred's laws, xvi, he who stole a cow and a calf was to repay the worth of the cow and

Chapters prefixed to Alfred's laws.

Effect of this fabrication on the body of laws of Alfred's work.

Inconsistency occasioned by this interpolation.

Hume notices the inconsistency without perceiving the fraud.

Some of the inconsistencies occasioned by the interpolation.

Some of the inconsistencies occasioned by the interpolation.

forty shillings for the calf. Goring by an ox was the death of the ox, and the flesh not to be eaten. Exodus xxi, 28; pseudo-Alfred, section 21. By the laws of Alfred, xxiv, the wounded person had the ox. This pseudograph makes municipal laws of the ten commandments; sections 1 to 10 regulate concubinage; section 12 makes it death to strike or to curse father or mother; sections 14, 15, give eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe; section 19 sells the thief to repay his theft; section 24 obliges the fornicator to marry the woman he has lain with; section 29 forbids interest on money; sections 28, 35 make the laws of bailment very different from what Lord Holt delivers in Coggs *v.* Bernard, and what Sir William Jones tells us they were; and punishes witchcraft with death, section 30, which Sir Matthew Hale, 1 Hale's Pleas of the Crown, chapter 33, declares was not a felony before the statute 1, James, chapter 12.

The interpolation not recognized as authority by Sir Matthew Hale.

Hale's affirmation of his belief in witches.

It was under that statute that he hung Rose Cullender and Amy Duny, 16 Charles II (1662), on whose trial he declared "that there were such creatures as witches, he made no doubt at all; for, first, the Scripture had affirmed so much; second, the wisdom of all nations had provided laws against such persons, and such hath been the judgment of this kingdom, as appear by that act of Parliament which hath provided punishment proportionable to the quality of the offense." And we must certainly allow greater weight to this position "that it was no felony till James's statute," deliberately laid down in his Hale's Pleas of the Crown, a work which he wrote to be printed, and transcribed for the press in his lifetime, than to the hasty scriptum that "at common law witchcraft was punished with death as heresy, by writ *de heretico comburendo*" in his methodical

Hale's Pleas of the Crown more authoritative than his hasty methodical summary.

summary of the Pleas of the Crown (page 6), a work "not intended for the press, not fitted for it, and which he declared himself he had never read over since it was written" (preface); unless we understand his meaning in that to be that witchcraft could not be punished at common law as witchcraft, but as heresy. In either sense, however, it is a denial of this pretended law of Alfred.

Methodical summary not intended for publication.

Now all men of reading know that these pretended laws of homicide, concubinage, theft, retaliation, compulsory marriage, usury, bailment, and others which might have been cited from this pseudograph, were never the laws of England, not even in Alfred's time; and, of course, that it is a forgery. Yet, palpable as it must be to a lawyer, our judges have piously avoided lifting the veil under which it was shrouded. In truth, the alliance between church and state in England has ever made their judges accomplices in the frauds of the clergy; and even bolder than they are; for instead of being contented with the surreptitious introduction of these four chapters of Exodus, they have taken the whole leap, and declared at once that the whole Bible and Testament in a lump, make a part of the common law of the land; the first judicial declaration of which was by this Sir Matthew Hale. And thus they incorporate into the English code, laws made for the Jews alone, and the precepts of the gospel, intended by their benevolent Author as obligatory only *in foro conscientiæ;* and they arm the whole with the coercions of municipal law. They do this, too, in a case where the question was not at all whether Christianity was a part of the law of England, but simply how far the ecclesiastical law was to be respected by the common law courts of England, in the special case of a right of presentment; thus identifying Christianity with the ecclesiastical law of England.[1]

Certain provisions of the pseudograph were never the laws of England.

The fraud, however, has been studiously enshrouded.

Church and state in England have always been upheld by fraud.

Sir Matthew Hale makes the first judicial decision on the subject.

The precepts of the gospel obligatory only *in foro conscientiæ.*

Question under consideration.

Summary of doctrine.

[1] A summary of the doctrine that "Christianity is a part of the common law," is given in Blackstone's Commentaries, book iv, page *40 *et seq.*, from which can be obtained a modified view of the desires of modern religious "reformers" and Sunday-law advocates, who hold so tenaciously to this doctrine. The subject is treated under eleven heads in a chapter on "Offenses against God and Religion." The advancing principles of religious freedom and equality of rights for all, have now and then modified the penalties, or relegated the statutes to the background; yet the old doctrine is still maintained; and, when the power is not lacking, the "dissenter" from the dominant religion is still made to feel the "iron hand of law." Blackstone says:

Effect of principles of religious liberty.

State crimes against God.

"First, then, of such crimes and misdemeanors as more immediately offend Almighty God, by openly transgressing the precepts of religion, either natural or revealed: and mediately, by their bad example and consequence, the law of society also: which constitutes that guilt in the action which human tribunals are to censure.

Apostasy.

"1. Of this species the first is that of *apostasy*, or a total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offense can only take place in such as have once professed the true religion. The perversion of a Christian to Judaism, paganism, or other false religion, was punished by the emperors Constantius and Julian with confiscation of goods; to which the emperors Theodosius and Valentinian added capital punishment, in case the apostate endeavored to pervert others to the same iniquity: a punishment too severe for any temporal laws to inflict upon any spiritual offense; and yet the zeal of our ancestors imported it into this country; for we find by Bracton that in his time apostates were to be burnt to death. . . .

Capital punishment.

Apostates to be burnt in England.

Heresy.

"2. A second offense is that of *heresy*, which consists not in a [*45] total denial of Christianity, but of some of its essential *doctrines, publicly and obstinately avowed; being defined by Sir Matthew Hale, "sententia rerum divinarum humano sensu excogitata, palam docta et pertinaciter defensa." And here it must also be acknowledged that particular modes of belief or unbelief, not tending to overturn Christianity itself, or to sap the foundations of morality, are by no means the object of coercion by the civil magistrate. What doctrine shall therefore be adjudged heresy was left by our old constitution to the determination of the ecclesiastical judge; who had herein a most arbitrary latitude allowed him. For the general definition of an heretic given by Lyndewode, extends to the smallest deviation from the doctrines of holy church: "hæreticus est qui dubitat de fide catholica, et qui negligit servare ea, quæ Romana ecclesia statuit, seu servare decreverat." Or, as the statute 2 Henry IV, chapter 15, expresses it in English, "teachers of erroneous opinions, contrary to the faith and blessed determinations

Arbitrary latitude allowed to the ecclesiastical judge.

Definition of "heretic."

of the holy church." Very contrary this to the usage of the first general councils, which defined all heretical doctrines with the utmost precision and exactness. And what ought to have alleviated the punishment, the uncertainty of the crime, seems to have enhanced it in those days of blind zeal and pious cruelty. It is true that the sanctimonious hypocrisy of the canonists went at first no farther than enjoining penance, excommunication, and ecclesiastical deprivation for heresy; though afterwards they proceeded boldly to imprisonment by the ordinary, and confiscation of goods *in pios usus*. But in the meantime they had prevailed upon the weakness of bigoted princes to make the civil power subservient to their purposes, by making heresy not only a temporal, but even a capital, offense: the Romish ecclesiastics determining, without appeal, whatever they pleased to be heresy, and shifting off to the secular arm the odium and drudgery of executions; with which they themselves were too tender and delicate to intermeddle. Nay, they pretended to intercede and pray, on behalf of the convicted heretic, *ut citra mortis periculum sententia circa eum moderatur:* well *knowing at the same time that they were delivering the unhappy victim to certain death. Hence the capital punishments inflicted on the ancient Donatists and Manichæans by the emperors Theodosius and Justinian; hence also the constitution of the emperor Frederic mentioned by Lyndewode, adjudging all persons without distinction to be burnt with fire, who were convicted of heresy by the ecclesiastical judge. . . . Christianity being thus deformed by the demon of persecution upon the continent, we cannot expect that our own island should be entirely free from the same scourge. . . . In the reign of Henry the Fourth, when the eyes of the Christian world began to open, and the seeds of the Protestant religion (though under the opprobrious name of Lollardy) took root in the kingdom; the clergy taking advantage from the king's dubious title to demand an increase of their own power, obtained an act of Parliament, which sharpened the edge of persecution to its utmost keenness. For, by that statute, the diocesan alone, without the intervention of a synod, might convict of heretical tenets; and unless the convict abjured his opinions, or if after abjuration he relapsed, the sheriff was bound, *ex officio*, if required by the bishop, to commit the unhappy victim to the flames, without waiting for the consent of the crown. . . . By statute 1 Elizabeth, chapter 1, all former statutes relating to heresy are repealed, which leaves the jurisdiction of heresy as it stood at common law; viz., as to the infliction of common censures, in the ecclesiastical courts; and in case of burning the heretic, in the provincial senate only. . . . The principal point now gained was, that by this statute a boundary is for the first time set to what shall be accounted heresy; nothing for the future being to be so determined, but only such tenets, which have been heretofore so declared: (1) By the words of the canonical Scriptures; (2) By the first four general councils, or such *others as have only used the words of the Holy Scriptures; or, (3) Which shall

Usage of the councils.

Made a capital offense.

Pious pretensions.

[*46]

Persecution in England.

Sheriff must burn victim at command of bishop.

Heresy made more definite.

[*49]

Heresy made more definite.

hereafter be so declared by the Parliament, with the assent of the clergy in convocation. Thus was heresy reduced to a greater certainty than before; though it might not have been the worse to have defined it in terms still more precise and particular: as a man continued still liable to be burnt for what perhaps he did not understand to be heresy till the ecclesiastical judge so interpreted the words of the canonical Scriptures.

A consoling state of affairs!

"3. Another species of offenses against religion are those which affect the *established church*. And these are either positive or negative; positive, by reviling its ordinances; or negative, by non-conformity to its worship. . . . Non-conformists are of two sorts: first, such as absent themselves from divine worship in the established church, through total irreligion, and attend the service of no other persuasion. These, by the statutes of 1 Elizabeth, chapter 2; 23 Elizabeth, chapter 1; and 3 James I, chapter 4, forfeit one shilling to the poor every Lord's day they so absent themselves, and twenty pounds to the king if they continue such default for a month together. And if they keep any inmate, thus irreligiously disposed, in their houses, they forfeit ten pounds per month. The second species of non-conformists are those who offend through a mistaken or perverse zeal. Such were esteemed by our laws, enacted since the time of the Reformation, to be papists and Protestant dissenters. . . .

Non-conformists.

Papists and Protestant dissenters.

Blasphemy.

"4. The fourth species of offenses, therefore, more immediately against God and religion, is that of *blasphemy* against the Almighty, by denying his being or providence; or by contumelious reproaches of our Saviour Christ. Whither also may be referred all profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule. These are offenses punishable at common law by fine and imprisonment, or other infamous corporal punishment (1 Hawkins's Pleas of the Crown, 5); for Christianity is part of the laws of England (1 Ventris's Reports, 293; 2 Strange's Reports, 834).

Christianity a part of the laws of England.

"5. Somewhat allied to this, though in an inferior degree, is the offense of profane and common *swearing* and **cursing*. . . .

[*60]

Witchcraft.

"6. A sixth species of offense against God and religion, of which our ancient books are full, is a crime of which one knows not well what account to give. I mean the offense of *witchcraft*, *conjuration*, *enchantment*, or *sorcery*. . . . The civil law punishes with death not only the sorcerers themselves, but also those who consult them, imitating in the former the express law of God, 'Thou shalt not suffer a witch to live.' And our own laws, both before and since the conquest, have been *equally penal; ranking this crime in the same class with heresy, and condemning both to the flames. . . . Our forefathers were stronger believers, when they enacted by statute 33 Henry VIII, chapter 8, all witchcraft and sorcery to be felony without benefit of clergy; and again by statute 1 James I, chapter 12, that all persons invoking any evil spirit, or consulting, covenanting with, entertaining, employing, feeding, or rewarding any evil spirit; or taking up dead

Punished by death.

[*61]

Severity of penalties.

bodies from their graves to be used in any witchcraft, sorcery, charm, or enchantment; or killing or otherwise hurting any person by such infernal arts, should be guilty of felony without benefit of clergy, and suffer death. And if any person should attempt by sorcery to discover hidden treasure, or to restore stolen goods, or to provoke unlawful love, or to hurt any man or beast, though the same were not effected, he or she should suffer imprisonment and pillory for the first offense, and death for the second. These acts continued in force till lately, to the terror of all ancient females in the kingdom: and many poor wretches were sacrificed thereby to the prejudice of their neighbors, and their own illusions; not a few having, by some means or other, confessed the fact at the gallows. . . . Capital crimes.

"7. A seventh species of offenders in this class are all *religious imposters*; such as falsely pretend an extraordinary commission from heaven; or terrify and abuse the people with false denunciations of judgments. These, as tending to subvert all religion, by bringing it into ridicule and contempt, are punishable by the temporal courts with fine, imprisonment, and infamous corporal punishment. Religious imposters.

"8. Simony. . . .

"9. Profanation of the Lord's day, vulgarly (but improperly) called *Sabbath-breaking*, is a ninth offense against God and religion, punished by the municipal law of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows its profanation, the keeping one day in the seven holy, as a time of relaxation and refreshment as well as for public worship, is of admirable service to a state, considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; it imprints on the minds of the people that sense of their duty to God, so necessary to make them good citizens, but which yet would be worn out and defaced by an unremitted continuance of labor, without any stated times of recalling them to the worship of their Maker. And therefore the laws of King Athelstan forbade all merchandizing on the Lord's day, under very severe penalties. And by the statute 27 Henry VI, chapter 5, no fair or market shall be held on the principal festivals, Good Friday, or any Sunday (except the four Sundays in harvest), on pain of forfeiting the goods exposed to sale. And since, by the statute 1 Charles I, chapter 1, no person shall assemble out of their own parishes, for any sport whatsoever upon this day; nor, in their parishes shall use any bull or *bear-baiting, interludes, plays, or other *unlawful* exercises, or pastimes; on pain that every offender shall pay three shillings four pence to the poor. This statute does not prohibit, but rather impliedly allows, any innocent recreation or Sabbath-breaking. A characteristic argument. Severity of penalties. [*64] Provision of statute.

THE SOCIAL COMPACT.

WRITTEN BY JAMES MADISON.

Although the old idea of a compact between the government and the people be justly exploded, the idea of a compact among those who are parties to a government is a fundamental principle of free government.

Compact theory a fundamental principle of free governmen..

The original compact is the one implied or presumed, but nowhere reduced to writing, by which a people agree to form one society. The next is a compact, here for the first time reduced to writing, by which the people in their social state agree to a government over them. These two compacts may be

Original compact implied.

amusement, within their respective parishes, even on the Lord's day, after divine service is over. But by statute 29 Charles II, chapter 7, no person is allowed to *work* on the Lord's day, or use any boat or barge, or expose any goods to sale; except meat in public houses, milk at certain hours, and works of necessity or charity, on forfeiture of five shillings. Nor shall any drover, carrier, or the like, travel upon that day, under pain of twenty shillings.

"10. Drunkenness. . . .

"11. The last offense which I shall mention, more immediately against religion and morality, and cognizable by the temporal courts, is that of open and notorious *lewdness*. . . ."

Christianity no part of American common law.

From the foregoing, it is evident that the idea that Christianity is a part of the common law of the American people, is not only contrary to the facts in the case, but it is contrary to reason, human right, and even to Christianity itself. As Jefferson says, Christianity was never intended to be enforced by law, but only *in foro conscientiæ;* and all attempts at compulsion are now, and always were, diametrically opposed to the teachings of the Author of Christianity. Religious legislation is the heritage that has been handed down to us from pagan times; and in all these laws can be seen the pagan superstitions. These superstitious ideas were on the statute books of the Roman empire, were adopted by a corrupted Christian church, and carried wherever the empire extended its dominion; were fraudulently engrafted on the common law of England by the supporters of the church, and have thus come down through the Puritans to us to-day — a relic of the superstitious ideas of the dark ages, a confusion of theocratic with other forms of government.

Descent of religious legislation.

A relic of superstition.

Nature of American compact.

considered as blended in the Constitution of the United States, which recognizes a union or society of States, and makes it the basis of the government formed by the parties to it.

Equally obligatory upon all.

It is the nature and essence of a compact, that it is equally obligatory on the parties to it, and, of course, that no one of them can be liberated therefrom without the consent of the others, or such a violation or abuse of it by the others as will amount to a dissolution of the compact.[1]

. . . . . .

Importance of the compact theory.

It must not be forgotten that compact, express or implied, is the vital principle of free governments as contradistinguished from governments not free, and that a revolt against this principle leaves no choice but between anarchy and despotism.[2]

. . . . . .

Powers of majorities.

The sovereignty of the society, as vested in and exercisable by the majority, may do anything that could be rightfully done by the unanimous concurrence of the members; the reserved rights of individuals (conscience, for example) in becoming parties to the original compact being beyond the legitimate reach of sovereignty, wherever vested or however viewed.[3]

Vested rights beyond their reach.

. . . . . .

Our government rests on compact.

The government of the United States, like all governments free in their principles, rests on compact; a compact, not between the government and the parties who formed and live under it, but among the parties themselves; and the strongest of governments are those in which the compacts were most fairly formed and most faithfully executed.[4]

1 "Writings of James Madison," volume iv, page 63.
2 "Writings of James Madison," volume iv, page 294.
3 "Writings of James Madison," volume iv, page 422.
4 "Writings of James Madison," volume iv, pages 392, 393.

18TH CONGRESS] [2D SESSION

March 3, 1825.

AN ACT

TO REDUCE INTO ONE THE SEVERAL ACTS ESTABLISHING THE POST-OFFICE DEPARTMENT.[1]

ENACTED MARCH 3, 1825.

. . . . . .

Post-offices to be kept open on every day on which mail arrives.

SECTION 11. *And be it further enacted*, That every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive, by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, *on every day of the week*, to deliver, on demand, any letter, paper, or packet, to the person entitled to, or authorized to receive, the same.

Postmaster to deliver mail on every day of the week.

. . . . . .

20TH CONGRESS] [2D SESSION

SUNDAY MAILS.

Jan. 19, 1829.

MONDAY, JANUARY 19, 1829.[2]

Report of Senate committee.

Mr. Johnson, of Kentucky, from the Committee on the Post-offices and Post-roads, to whom had been referred several petitions in relation to the transportation and opening the mails on the Sabbath day, made a report, concluding with a resolution, "that the committee be discharged from the further consideration of the subject."

Motion to dispense with the reading of the report.

Mr. Johnson moved that the reading of the report be dispensed with, and that it be printed. He re-

[1] "United States Statutes at Large," volume iv, page 102.

[2] "Register of Debates in Congress," volume v, page 42.

quested that more than one copy for each Senator should be provided, that he might send copies to his constituents. He believed that legislation upon the subject was improper, and that nine hundred and ninety-nine in a thousand were opposed to any legislative interference, inasmuch as it would have a tendency to unite religious institutions with the government.

Extra copies wanted.

Legislation upon the subject improper.

It would have a tendency to unite religion with the state.

Mr. Chambers moved that one thousand copies be printed, and Mr. Hayne, that three thousand copies be printed for the use of the Senate.

Motion to print extra copies.

Mr. Chandler said he had no objection to the printing of any number of copies, except as to principle: it did not appear to him that it was right to order a large number of copies to be printed until the Senate knew what it was, and that they should not be ordered until the report had been read, as it might seem to imply that they approved of the report.

Objection made.

Mr. Johnson said he had moved to dispense with the reading of the report, because he did not wish to trouble the Senate with the reading of any of his reports. He believed that these petitions and memorials in relation to Sunday mails, were but the entering wedge of a scheme to make this government a religious, instead of a social and political, institution; they were widely circulated, and people were induced to sign them without reflecting upon the subject,[1] or the consequences which would result from the adoption of the measure proposed. There was nothing more improper than the interference of Congress in this matter.

Petitions an entering wedge to make the government religious instead of political.

People induced to sign them without reflection.

Nothing more improper than the interference of Congress.

[1] In the more recent Sunday-law agitation of 1888–90, a much more expeditious plan was adopted for obtaining petitioners for Sunday laws. The advocates of religious legislation in many cases simply induced a representative convention or individual of some organization to indorse the petition, and then the names of the thousands or millions of mem-

Plan now adopted for obtaining "petitioners."

bers of such organization, as the case may have been, were presented to Congress as asking for a Sunday law. The following letters from Cardinal Gibbons and extract from the "Congressional Record," illustrate the plan of work:

"CARDINAL'S RESIDENCE, 408 NORTH CHARLES STREET,
BALTIMORE, December 4, 1888.

Letter of Cardinal Gibbons.

"REV. DEAR SIR: I have to acknowledge your esteemed favor of the 1st instant, in reference to the proposed passage of a law by Congress 'against Sunday work in the government's mail and military service,' etc.

"I am most happy to add my name to those of the millions of others who are laudably contending against the violation of the Christian Sabbath by unnecessary labor, and who are endeavoring to promote its decent and proper observance by legitimate legislation. As the late Plenary Council of Baltimore has declared, the due observance of the Lord's day contributes immeasurably to the restriction of vice and immorality, and to the promotion of peace, religion, and social order, and cannot fail to draw upon the nation the blessing and protection of an overruling Providence. If benevolence to the beasts of burden directed one day's rest in every week under the old law, surely humanity to man ought to dictate the same measure of rest under the new law.

"Your obedient servant in Christ,

"JAMES CARDINAL GIBBONS,

"REV. W. F. CRAFTS. "Archbishop of Baltimore."

Cardinal Gibbons's name counted for over seven million.

This letter saying, "I am most happy to add my name," was taken as the indorsement of *seven million two hundred thousand*, and so presented to Congress, as the following from the "Congressional Record" of January 17, 1889, shows:

Senator Blair presents the representative "signatures."

"MR. BLAIR: I present petitions of individual bodies, praying for the passage of a Sunday-rest law. Of the petitions, the following analysis is submitted by those who desire their presentation:

"PETITIONS FROM NATIONAL BODIES.

"*Contents:*

"1. Individual signatures, ...	407
"2. Representative signatures by indorsements of bodies and meetings, ...	14,174,337
"Total, ...	14,174,744

"Analysis of the latter:

Analysis of indorsements.

"First indorsement is that of the American Sabbath Union, which was officially constituted by official action of the General Conference of the Methodist Episcopal Church, the Home Missionary Society of the Baptist Church, the General Assemblies of the Presbyterian Church (North and South), and the Synod of the Reformed Church, five denominations whose membership together is five million nine hundred seventy-seven thousand six hundred ninety-three. Of the membership of the Brotherhood of Locomotive Engineers, the indorsement of whose international convention stands second, at least twenty thousand citi-

zens of the United States. Of the Knights of Labor, the indorsement of whose international convention stands third, at least two hundred nineteen thousand citizens of the United States. The Presbyterian General Assembly, North, whose action stands next, had at the time of the indorsement seven hundred twenty-two thousand seventy-one members. The convention of Christian Workers, whose indorsement is next, had four hundred fifty present when the unanimous vote of indorsement was taken. The Woman's Christian Temperance Union, which comes next, had one hundred eighty-five thousand five hundred twenty-one at the time of the vote. The Roman Catholics, for whom Cardinal Gibbons speaks, number seven million two hundred thousand."

Further analysis.

From this official analysis it appears that of the alleged fourteen million one hundred seventy-four thousand three hundred thirty-seven signatures to the Sunday-law petitions, only four hundred seven were actual signatures. And of the "representative signatures," seven million two hundred thousand (over one-half) no one had any authority whatever to present, as is proved by the following letter from Cardinal Gibbons:

"CARDINAL'S RESIDENCE, 408 NORTH CHARLES STREET,
BALTIMORE, MD., February 27, 1889.

Second letter of Cardinal Gibbons.

"MY DEAR SIR: In reply to your favor dated February 25, 1889, duly received, his Eminence Cardinal Gibbons desires me to write to you, that whatsoever countenance his Eminence has given to the 'Sunday law' referred to in your favor, as he had not the authority, so he had not the intention, of binding the archbishops, the bishops, or the Catholic laity of the United States. His Eminence bids me say to you that he was moved to write a letter favoring the passage of the bill, mainly from a consideration of the rest and recreation which would result to our poor overworked fellow-citizens, and of the facility which it would then afford them of observing the Sunday in a religious and decorous way.

Had no intention to pledge others.

An incorrect assumption.

"It is incorrect to assume that his Eminence, in the alleged words of Senator Blair set forth in your favor, 'signed the bill, thus pledging seven million two hundred thousand Catholics as indorsing the bill.'

"I have the honor to remain, with much respect, yours faithfully,

"J. P. DONAHUE, Chancellor.

"To D. E. LINDSEY, ESQ., 708 Rayner Avenue, Baltimore, Md."

Many Knights of Labor also oppose Sunday legislation.

That a large part of the Knights of Labor are also opposed to Sunday legislation is proved by the following speech of Master Workman Millard F. Hobbs, of the District of Columbia, who appeared before the House Committee on the District of Columbia, at a hearing held at Washington, February 18, 1890:

Address of a Master Workman.

"MR. HOBBS: I occupy, at the present time, the position of chief officer of the Knights of Labor in the District of Columbia. I want to deny that the Knights of Labor have authorized anybody to speak for them in this particular matter.

Knights refuse to indorse Sunday-rest bill.

"Mr. Crafts came before the Federation of Labor, and argued this bill, and that body refused to indorse the bill. He came before the District Assembly of the Knights of Labor (which is made up of all the Knights of Labor of the Assemblies of the District of Columbia), and that body has refused to indorse it. There are parties in that body who believe in the bill as it is; others believe in a certain portion of it, and others are wholly opposed to it; and the Knights of Labor, as a whole, have thought best not to have anything to do with it. Every Knight of Labor is in favor of a day of rest; — some of them believe they ought to have two days of rest. I believe they are all in favor of the rest feature of the bill, but, on account of what is called the religious feature of the bill, they are opposed to it.

As a whole, they will have nothing to do with it.

Opposition on account of its religious feature.

"Mr. Schulteis: I am a duly elected member of the legislative committee, but I deny that you are a member of that committee, or have any right to talk in this meeting, or have been authorized by any meeting —

"Mr. Crafts: Of the Knights of Labor. Mr. Schulteis has a right to be heard here.

"Mr. Hobbs: Mr. Schulteis's credentials merely show that he is a member of the District Committee on Labor Legislation, and Mr. Schulteis himself is in favor of the bill, and he is a member of that committee; but the balance of that committee have unanimously signed a petition against this bill. Now District Assembly 66 of the District of Columbia, has jurisdiction of all local assemblies in this community, and (with the exception of one local assembly) they have resolved not to do anything with this measure, claiming that they can best satisfy the members of the local assemblies in the District in this way. They do not believe in working on Sunday, but as for the other feature of the bill, they think it is best not to appear here in favor of it; and I believe there is quite a lot of the members of the order who believe that if they want rest on Sunday, or any other day, they can get it through their labor organizations, and that it is best not to try to get it through Congress by a sort of church movement.

Opposition to Sunday bill.

Resolved to have nothing to do with the measure.

Opposition almost unanimous.

"There are over thirty unions of Knights of Labor, and there has been only one petition sent here. They have remained silent upon this subject, and I think they want to remain silent upon it.

"Mr. Schulteis denies my right to speak here; but any one who belongs to the organization knows that I have a right to speak without credentials."

So, also, some of the members of the Methodist and Presbyterian churches, Woman's Christian Temperance Union, and others, who were counted as "petitioning" for the enactment of a Sunday-rest bill, under the head of "representative signatures," are known to be opposed to Sunday legislation, many of them having signed the counter-petition. How extensive this class is that have been represented to Congress as petitioning for Sunday laws when it was without their consent and directly contrary to their principles and desires, it is impossible to determine.

Others also opposed.

Mr. Chambers disagreed with the gentleman from Maine, that ordering a large number would imply any assent to the principles adopted in the report. Neither did he agree with the gentleman from Kentucky, that the adoption of the measure prayed for would have a bad tendency, and that legislation upon the subject would be improper. Some had asserted that this measure did tend to unite religious with our political institutions, and others had asserted that such would not be the result. The petitioners took an entirely different ground. They said that the observance of the Sabbath was connected with the civil interest of the government. He did not mean to be understood, however, as having formed any opinion upon the subject.

Mr. Chambers disagrees.

Petitioners claimed that Sabbath legislation was civil.

No opinion on the subject.

Mr. Johnson said he would state, in justice to himself, that he believed the petitioners were governed by the purest motives; but if the gentleman from Maryland would look at the proceedings of a meeting at Salem, in Massachusetts, he would find it did not matter what was the purity of the motive; that the petitioners did not consider the ground they had taken as being purely that the Sabbath was a day of rest; they assumed that it was such by a law of God.[1] Now some denominations considered one

Petitioners in convention did not consider the Sabbath purely civil.

[1] In the later Sunday agitations, this is a very prominent characteristic of the movement. In the speeches delivered in their conventions, the "sin of the national violation of the law of God," "the displeasure of God because we trample his Sabbath under foot," "breaking up the churches by pleasure going, Sunday amusements, newspapers," etc., etc., is dwelt upon at length; and sometimes they even go so far as to oppose the so-called "civil Sabbath" theory, and demand a law to enforce Sunday rest, and to "promote its observance as a day of religious worship." But they generally appear before our law-making bodies in a very different way, as is strikingly illustrated by the following extract from an open letter of the leading apostle of religious legislation on the Pacific Coast, dated at Oakland, California, February 19, 1890:

Religious motives a prominent characteristic of Sunday-rest movements.

"... You may notice how cautious we have to be in the wording of this petition, for as we have no State law recognizing the

Letter of a Sunday-rest agitator.

Difference of opinion on the sacredness of the day.

Petitioners call upon Congress to settle the law of God.

First step in religious legislation.

day the most sacred, and some looked to another, and these petitions did, in fact, call upon Congress to settle what was the law of God. The committee had framed their report upon policy and expediency. It was but the first step taken, that they were to legislate upon religious grounds, and it made no sort of difference which was the day asked to be set apart, which day was to be considered sacred, whether it was the first day or the seventh, the principle was wrong. It was upon this ground that the committee went in making their report.

The principle is wrong.

Reading of report called for.

Mr. Rowan called for the reading of the report, which was read.

Necessity of resorting to the "civil" Sabbath argument.

Sabbath day, we have no hope of closing the saloon on that day except as a municipal and police arrangement in the interest of sobriety, morality, law, and order. If we would undertake to close the saloons because the Sabbath is a day sacred by divine authority, we would be met at once, both by the council and by the courts, with the declaration: The State of California knows no religious Sabbath — no Sunday except a holiday. Thus we would be defeated at the very beginning. . . . As yet we hardly dare to be hopeful of success, but the Lord of the Sabbath is supreme in California as elsewhere. By his blessing we shall succeed. May we not hope for the prayers of the friends of temperance and of the Sabbath?" "Christian Statesman," March 13.

Senator Blair also endeavors to cover up the religious phase of his bills.

Another point of interest is that Senator Blair, before re-introducing his Sunday bill and constitutional amendment, December 9, 1889, studiously eliminated the prominent expressions showing its religious nature, but left the effects of his bills the same. They seem to forget that a wolf in a sheep's clothing is none the less a wolf, and that the Scripture saith: "And no marvel; for Satan himself is transformed into an angel of light."

An appropriate scripture.

Religion the basis generally for Sunday legislation.

It is only as a last resort that the "civil" Sabbath argument is taken up. In general, both the supporters and opponents of Sunday legislation, rest it on the same foundation — that it is religious legislation. Elliott F. Shepard, former publisher of the New York "Mail and Express," and president of the American Sabbath Union, declared: "We do not rest this work on mere human reasoning; we rest it wholly and directly on the divine commandment."

Rest it on the divine commandment.

Rev. J. H. Knowles, editor of the "Pearl of Days," the official organ of the American Sabbath Union, said: "It will become more and more apparent that the real defenders of the day are those who regard it as a divine, not merely a human, institution."

20TH CONGRESS] [2D SESSION

SENATE REPORT ON SUNDAY MAILS.[1]

Jan. 19, 1829.

COMMUNICATED TO THE SENATE, JANUARY 19, 1829.

Mr. Johnson[2] of Kentucky, made the following report:

Report of Senate committee.

"The committee to whom were referred the several petitions on the subject of mails on the Sabbath, or first day of the week, report:

[1] "American State Papers," Class VII, page 225.

[2] Richard M. Johnson was a representative statesman of the times. He commenced his public career in the legislature of Kentucky, at only twenty-three years of age. His public life is summed up by Lanman, in his "Dictionary of the United States Congress," as follows:

Senator Johnson a representative statesman.

"He was born in Kentucky in 1780, and died at Frankfort, November 19, 1850. In 1807 he was chosen a representative in Congress from Kentucky, which post he held until 1813. In 1813 he raised a volunteer regiment of cavalry of one thousand men to fight the British and Indians on the Lakes, and during the campaign that followed, served with great credit, under General Harrison, as a colonel of that regiment. He greatly distinguished himself at the Battle of the Thames, and the chief Tecumseh is said to have been killed by his hand. In 1814, he was appointed Indian commissioner by President Madison. He was again a representative in Congress from 1813 to 1819. In 1819 he went from the House into the United States Senate, to fill an unexpired term; was re-elected, and served as Senator until 1829. He was re-elected to the House, and served there until 1837, when he became Vice-President, and as such presided over the Senate. At the time of his death he was a member of the Kentucky Legislature, and he died from a second attack of paralysis. He was a kind-hearted, courageous, and talented man." Pages 211, 212.

Biographical sketch.

His bravery in battle.

Elected to the vice-presidency.

His character.

As evidence of the high regard which the nation had for him, we insert the following resolution of the first session of the fifteenth Congress of the United States:

"RESOLUTION REQUESTING THE PRESIDENT OF THE UNITED STATES TO PRESENT A SWORD TO COLONEL RICHARD M. JOHNSON.

Resolution requesting the President to present Mr. Johnson a sword for his bravery.

"*Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled*, That the President of the United States be requested to present to Colonel Richard M. Johnson a sword, as a testimony of the high sense entertained by Congress of the daring and distinguished valor displayed by himself and the regiment of volunteers under his command, in charging, and essentially

Rest sanctioned by the usages of all nations.

That some respite is required from the ordinary vocations of life is an established principle, sanctioned by the usages of all nations, whether Christian or pagan. One day in seven has also been determined upon as the proportion of time; and

Custom has set apart Sunday as the day of rest.

in conformity with the wishes of a great majority of the citizens of this country, the first day of the week, commonly called Sunday, has been set apart to that object. The principle has received the sanction of the national legislature, so far as to admit a suspension of all public business on that day, except in cases of absolute necessity, or of great public utility. This principle the committee would not wish to disturb. If kept within its legitimate sphere of action, no injury can result from its observance. It

Proper object of government to protect all, but to determine for none.

should, however, be kept in mind that *the proper object of government is to protect all persons in the enjoyment of their religious as well as civil rights, and not to determine for any whether they shall esteem one day above another, or esteem all days alike holy.*[1]

contributing to vanquish, the combined British and Indian forces, under Major General Proctor, on the Thames, in Upper Canada, on the fifth day of October, one thousand eight hundred and thirteen.

"APPROVED, April 4, 1818."

While Jefferson was president of the United States, he inscribed a letter to Mr. Johnson, from which the following is an extract:

"WASHINGTON, March 10, 1808.

President Jefferson's letter to Colonel Johnson.

". . . I cannot but be deeply sensible of the good opinion you are pleased to express of my conduct in the administration of our government. This approbation of my fellow-citizens is the richest reward I can receive. I am conscious of having always intended to do what was best for them; and never, for a single moment, to have listened to any personal interest of my own. . . ." "Works of Thomas Jefferson," volume v, page 256.

No power on earth to which men are bound to submit their judgment.

[1] "The Protestant doctrine, touching the right of private judgment," says Lord Macaulay, "is not that opposite doctrines may both be true; but it is that there is on the face of the earth no visible body to whose decrees men are bound to submit their private judgment on points of faith."

And in his essay on "Southey's Colloquies," he says: "Men are never so likely to settle a question rightly as when they discuss it

Variety of sentiment.

We are aware that a variety of sentiment exists among the good citizens of this nation, on the subject of the Sabbath day; and our government is designed for the protection of one as much as another. The Jews, who in this country are as free as Christians, and entitled to the same protection from the laws, derive their obligation to keep the Sabbath day from the fourth commandment of their decalogue, and in conformity with that injunction pay religious homage to the seventh day of the week, which we call Saturday. One denomination of Christians among us, justly celebrated for their piety, and certainly as good citizens as any other class, agree with the Jews in the moral obligation of the Sabbath, and observe the same day. There are, also, many Christians among us who derive not their obligation to observe the Sabbath from the decalogue, but regard the Jewish Sabbath as abrogated. From the example of the apostles of Christ, they have chosen the first day of the week instead of that day set apart in the decalogue, for their religious devotions. These have generally regarded the observance of the day as a devotional exercise, and would not more readily enforce it upon others than they would enforce secret prayer or devout meditations.

The Jew as free as the Christian, and entitled to the same protection.

Certain Christians observe the seventh day.

Many Christians hold that Sunday observance should no more be enforced than secret prayer.

freely. A government can interfere in discussion only by making it less free than it would otherwise be. Men are most likely to form just opinions when they have no other wish than to know the truth, and are exempt from all influence, either of hope or fear. Government, as government, can bring nothing but the influence of hopes and fears to support its doctrines. It carries on controversy, not with reasons, but with threats and bribes. If it employs reasons, it does so, not in virtue of any powers which belong to it as a government. Thus, instead of a contest between argument and argument, we have a contest between argument and force. Instead of a contest in which truth, from the natural constitution of the human mind, has a decided advantage over falsehood, we have a contest in which truth can be victorious only by accident."

Free discussion favorable to truth.

Governmental interference detrimental.

Various opinions.

Urging the fact that neither their Lord nor his disciples, though often censured by their accusers for a violation of the Sabbath, ever enjoined its observance, they regard it as a subject on which every person should be fully persuaded in his own mind, and not coerce others to act upon his persuasion. Many Christians, again, differ from these, professing to derive their obligation to observe the Sabbath from the fourth commandment of the Jewish decalogue, and bring the example of the apostles, who appear to have held their public meetings for worship on the first day of the week, as authority for so far changing the decalogue as to substitute that day for the seventh. The Jewish government was a theocracy, which enforced religious observances; and though the committee would hope that no portion of the citizens of our country would willingly introduce a system of religious coercion in our civil institutions, the example of other nations should admonish us to *watch carefully against its earliest indication*.[1] With these different religious views, the

Jewish government a theocracy.

Need of vigilance.

[1] "In September, 1875, General Grant, while attending an army reunion in Iowa, offered three resolutions on the subject of education, and made a speech in which he used the following language: 'Let us labor for the security of free thought, free speech, free press, pure morals, unfettered religious sentiments, and equal rights and privileges for all men, irrespective of nationality, color, or religion; encourage free schools, resolve that not one dollar appropriated to them shall go to the support of any sectarian school; resolve that neither State nor nation shall support any institution save those where every child may get a common school education, unmixed with any atheistic, pagan, or sectarian teaching; leave the matter of religious teaching to the family altar, *the church, and the private school, supported entirely by private contribution*. Keep church and state forever separate.' This was published broadcast, and was received with marked favor by the press and people." "Appleton's Cyclopedia of American Biography" (except italics), volume ii, page 722. Considerable interest was aroused at this time upon the question of religious liberty, which resulted in the proposal of the Blaine amendment by the national House of Representatives, August 14, 1876, *ante* page 349.

Equality of rights and privileges for all men.

Leave religious teaching to private institutions.

committee are of opinion that Congress cannot interfere. *It is not the legitimate province of the legislature to determine what religion is true, or what false.*

Not in the province of the legislature to decide religious questions.

Our government is a civil, and not a religious, institution. Our Constitution recognizes in every person the right to choose his own religion, and to enjoy it freely without molestation. Whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others. The transportation of the mail on the first day of the week, it is believed, does not interfere with the rights of conscience. *The petitioners for its discontinuance appear to be actuated by a religious zeal, which may be commendable if confined to its proper sphere; but they assume a position better suited to an ecclesiastical than to a civil institution.* They appear in many instances to lay it down as an axiom that the practice is a violation of the law of God. Should Congress in legislative capacity adopt the sentiment, it would establish the principle that the legislature is a proper tribunal to determine what are the laws of God. It would involve a legislative decision on a religious controversy, and on a point in which good citizens may honestly differ in opinion, without disturbing the peace of society or endangering its liberties. If this principle is once introduced, it will be impossible to define its bounds.

Our government civil, not religious.

Sunday work interferes not with rights of conscience.

Petitioners actuated by religious zeal.

A wrong principle.

Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for the violation of what government denominated the law of God.[1] To pre-

The basis of all religious persecutions.

[1] "This sombre feeling has prompted men to believe that to spare the heretic is to bring down the wrath of God upon the whole community; and now in Boston many people stoutly maintained that God

vent a similar train of evils in this country, the Constitution has wisely withheld from our govern-

Arguments of the persecutor.

had let loose the savages, with firebrand and tomahawk, to punish the people of New England for ceasing to persecute false worshipers, and especially the idolatrous Quakers." "The Beginnings of New England," page 220 *et seq.*

Nor to-day is the same feeling any less prevalent in the present Sunday-law movement and agitation for religious legislation. Says Rev. C. E. Walker in the "Christian Nation," a National Reform organ:

A sample argument.

"As a nation we have suffered judgments, and will suffer yet more, far more, unless the people return to God *as directed by the National Reform Association.*"

Rev. M. A. Gault, a vice-president of the National Reform Association, and an earnest advocate of Sunday legislation, says:

What Sunday-rest agitators desire.

"It is not to have the government set up some corrupt church establishment, and then lay its hand on everything that does not conform to it. This is what caused the persecutions in the old world. Our remedy for all these malefic influences is to have the government simply set up the *moral law*, and recognize *God's authority* behind it, and *lay its hand on any religion that does not comform to it.* . . . . Besides, this is the *only way* human and divine authority can exercise their separate offices in place. The only way they can be harmonized and kept from conflicting, is to say that *God knows best, and make human authority subordinate to the divine.*" "Christian Statesman," January 13, 1887.

What state-church advocates always claim.

At a National Reform convention at Lakeside, Ohio, in August, 1887, Dr. Mc Allister, editor of the "Christian Statesman," said: "True Christianity will not persecute. False religions do persecute, but true religion never. The state, if led by a false religion, will be a persecutor."

This doctrine of these American Protestant divines of to-day is identically the same as that of the state-church advocates of thirteen centuries ago. This same point was somewhat more philosophically stated by Pope Pelagius, in A. D. 556, when Narses refused to obey a certain command of the pope on the ground that it would be persecution:

Philosophy of the sixth century.

"Be not alarmed at the idle talk of some, crying out against persecution, and reproaching the church, as if she delighted in cruelty, when she punishes evil with wholesome severities, or procures the salvation of souls. *He alone persecutes, who forces to evil.* But to restrain men from doing evil, or to punish those who have done it, is not persecution, or cruelty, but love of mankind." Bower's "History of the Popes," Pelagius, A. D. 556.

And in the "Christian Nation," September 28, 1887, we read: "Let those who will, remember the Sabbath to keep it holy from motives of love and obedience; the remnant must be made to do so through fear of law. We have no option."

ment the power of defining the divine law.[1] It is a right reserved to each citizen; and while he respects the rights of others, he cannot be held amenable to any human tribunal for his conclusions. *Extensive religious combinations to effect a political object are, in the opinion of the committee, always dangerous.* This first effort of the kind calls for the establishment of a principle which, in the opinion of the committee, would lay the foundation for dangerous innovations upon the spirit of the Constitution, and upon the religious rights of the citizens. *If admitted, it may be justly apprehended that the future measures of the government will be strongly marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence; and when that influence begins to operate upon the political institutions of a country, the civil power soon bends under it; and the catastrophe of other nations furnishes an awful warning of the consequence.*[2]

Defining the law of God, unconstitutional.

Religious combination always dangerous.

A dangerous principle.

Influence of precedents.

All religious despotism commences by combination.

Under the present regulations of the Post-office Department, the rights of conscience are not invaded. Every agent enters voluntarily, and it is presumed conscientiously, into the discharge of his duties, without intermeddling with the conscience of another. Post-offices are so regulated that but a small proportion of the first day of the week is required to be occupied in official business. In the transportation of the mail on that day, no one agent

Rights of conscience not now invaded.

[1] "From kings, indeed," says John Fiske, "we have no more to fear; they have come to be as spooks and bogies of the nursery. But the gravest dangers are those which present themselves in new forms, against which people's minds have not yet been fortified with traditional sentiments and phrases." "The Beginnings of New England," page 32.

New movements most dangerous.

[2] "The experience of many ages," says Lord Macaulay, "proves that men may be ready to fight to the death, and to persecute without pity, for a religion whose creed they do not understand, and whose precepts they habitually disobey."

A characteristic of the bigot.

No interference with others' rights.

is employed many hours. Religious persons enter into the business without violating their own consciences or imposing any restraints upon others. Passengers in the mail stages are free to rest during the first day of the week, or to pursue their journeys at their own pleasure. While the mail is transported on Saturday, the Jew and the Sabbatarian may abstain from any agency in carrying it, on conscientious scruples. While it is transported on the first day of the week, another class may abstain, from the same religious scruples. The obligation of government is the same on both these classes; and the committee can discover *no principle on which the claims of one should be more respected than those of the other;* unless it be admitted that the consciences of the minority are less sacred than those of the majority.

Sabbatarian can rest on Saturday and Sunday-keeper on Sunday.

Government treats both classes the same.

It is the opinion of the committee that the subject should be regarded simply as a question of expediency, irrespective of its religious bearing. In this light it has hitherto been considered. Congress has never legislated upon the subject. It rests, as it ever has done, in the legal discretion of the Postmaster-General, under the repeated refusals of Congress to discontinue the Sabbath mails. His knowledge and judgment in all the concerns of that department will not be questioned. His intense labors and assiduity have resulted in the highest improvement of every branch of his department. It is practiced only on the great leading mail routes, and such others as are necessary to maintain their connections. To prevent this, would, in the opinion of the committee, be productive of immense injury, both in its commercial and political, and also its moral, bearings. The various departments of government require, frequently in peace, always in war, the speediest intercourse with

Congress has never legislated on the subject, and has repeatedly refused to discontinue Sabbath mails.

Its discontinuance would be productive of immense injury.

the remotest parts of the country; and one important object of the mail establishment is to furnish the greatest and most economical facilities for such intercourse. The delay of the mails one whole day in seven would require the employment of special expresses, at great expense, and sometimes with great uncertainty.

Importance of the mails

The commercial, manufacturing, and agricultural interests of the country are so intimately connected as to require a constant and most expeditious correspondence betwixt all our seaports, and betwixt them and the most interior settlements. The delay of the mails during the Sunday would give occasion for the employment of private expresses, to such an amount that probably ten riders would be employed where one mail stage would be running on that day, thus diverting the revenue of that department into another channel, and sinking the establishment into a state of pusillanimity incompatible with the dignity of the government of which it is a department.

Commercial interests of the country demand Sunday mails.

Passengers in the mail stages, if the mails are not permitted to proceed on Sunday, will be expected to spend that day at a tavern upon the road, generally under circumstances not friendly to devotion, and at an expense which many are but poorly able to encounter. To obviate these difficulties, many will employ extra carriages for their conveyance, and become the bearers of correspondence, as more expeditious than the mail. The stage proprietors will themselves often furnish the travelers with those means of conveyance; so that the effect will ultimately be only to stop the mail, while the vehicle which conveys it will continue, and its passengers become the special messengers for conveying a considerable portion of what otherwise constitutes the contents of the mail. Nor can the committee discover where the system could consistently end. If

Idleness will be worse than work.

Logical requirements.

the observance of a holiday becomes incorporated in our institutions, shall we not forbid the movement of an army; prohibit an assault in time of war; and lay an injunction upon our naval officers to lie in the wind while upon the ocean on that day? Consistency would seem to require it. Nor is it certain that we should stop here. *If the principle is once established that religion, or religious observances, shall be interwoven with our legislative acts, we must pursue it to its ultimatum.* We shall, if consistent, provide for the erection of edifices for worship of the Creator, and for the support of Christian ministers, if we believe such measures will promote the interests of Christianity.[1]

Religious legislation once established must be pursued to its ultimatum.

It is the settled conviction of the committee, that the only method of avoiding these consequences, with their attendant train of evils, is to adhere strictly to the spirit of the Constitution, which regards the general government in no other light than that of a civil institution, wholly destitute of religious authority. *What other nations call religious toleration, we call religious rights.*[2] *They are not exercised in virtue*

What other nations call toleration, we call rights.

[1] As if to give these words a marked fulfilment, Senator Blair drafted a constitutional amendment, which he introduced four days after he introduced his Sunday bill. This proposed amendment provides in section 2 that "each State in this Union *shall establish and maintain* a system of free public schools, adequate for the education of all the children living therein, between the ages of six and sixteen years inclusive, in the common branches of knowledge, and in virtue, morality, *and the principles of the Christian religion.*"

The state to teach religion.

This would make it necessary that a part of the hundreds of millions of dollars which arises from the taxes of the believer and unbeliever, of the Jew and agnostic, of the deist and atheist, of the Catholic and Protestant, should be used in teaching the principles of the Christian religion. Though these measures did not pass, they nevertheless plainly give evidence of the restlessness which now permeates the churches, and the dissatisfaction of the clergy with the foundation principles of the American government.

[2] In the Virginia Convention of 1776, Mr. Madison objected to the use of the word "toleration," even in its broadest sense,— "the fullest tolera-

Mr. Madison objected to the word.

of governmental indulgence, but as rights, of which government cannot deprive any portion of citizens, These rights inalienable.

tion,"—intending absolute religious liberty. The last section of the proposed Declaration of Rights provided that "all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate." Madison advocated the inalienable right of every man to his own religious opinions, and the right to exercise them—absolute separation of religion and the state. "He pointed out the distinction between the recognition of an absolute right and the toleration of its exercise; for toleration implies the power of jurisdiction. He proposed, therefore, instead of providing that 'all men should enjoy the fullest toleration in the exercise of religion,' to declare that 'all men are equally entitled to the full and free exercise of it according to the dictates of conscience.' . . . This distinction between the assertion of a right and the promise to grant a privilege, only needed to be pointed out." Accordingly, the section was finally adopted as follows: "'That religion, or the duty we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion according to the dictates of conscience.' Thus it stands to this day in the Bill of Rights of Virginia, and of other States which subsequently made it their own, possessing for us the personal interest of being the first public work of the coming statesman." Gay's "James Madison," pages 17, 18. See also Rives's "Life of Madison," volume i, page 140.

Absolute separation of state and religion.

All men equally entitled to free exercise of religion.

The same point was tersely expressed by Lord Stanhope in the British House of Lords, in 1827, on the bill for the repeal of the test and corporation acts, in the following words: "The time was when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will be spurned as an insult."

Evolution of the toleration theory.

Dr. Philip Schaff, in laying down the same principle, says: "Toleration is an important step from state-churchism to free-churchism. But it is only a step. There is a very great difference between toleration and liberty. Toleration is a concession which may be withdrawn; it implies a preference for the ruling form of faith and worship, and a practical disapproval of all other forms. . . . In our country we ask no toleration for religion and its free exercise, but we claim it as an inalienable right." "Church and State in the United States," page 14.

Toleration not liberty.

Judge Cooley, also, in "Constitutional Limitations," declares that the American Constitutions "have not established religious toleration merely, but religious equality; in that particular, being far in advance not only of the mother country, but also of much of the colonial legislation, which, though more liberal than that of other civilized countries, nevertheless exhibited features of discrimination based upon religious beliefs or professions." Fifth edition, chapter 13, paragraph 1.

Religious equality—not religious toleration.

Though invaded, still confirmed by justice.

however small. Despotic power may invade those rights, but justice still confirms them.[1]

A single decision of a religious controversy outside the sphere of government.

Let the national legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid, for that usurpation of the divine prerogative in this country which has been the desolating scourge to the fairest portions of the Old World.

Our Constitution recognizes only persuasion to enforce religious observances.

Our Constitution recognizes no other power than that of persuasion, for enforcing religious observances. Let the professors of Christianity recommend their religion by deeds of benevolence, by Christian meekness, by lives of temperance and holiness. Let them combine their efforts to instruct the ignorant, to relieve the widow and the orphan, to promulgate to the world the gospel of their Saviour, recommending its precepts by their habitual example; government will find its legitimate object in protecting them. It cannot oppose them, and they will not need its aid. *Their moral influence will then do infinitely more to advance the true interests of religion, than any measure which they may call on Congress to enact.* The petitioners do not complain of any infringement upon their own rights. They enjoy all that Christians ought to ask at the hands of any government — protection from all molestation in the exercise of their religious sentiments.

Petitioners enjoy protection from all molestation.

Resolved, That the committee be discharged from any further consideration of the subject.

Report and resolution concurred in.

The report and resolution were concurred in by the Senate.

[1] In the Virginia "Act for establishing religious freedom," Jefferson said: "We are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind; and that if any act shall be hereafter passed to repeal the present, *or narrow its operation*, such act will be an infringement of natural right." *Ante* page 135.

21ST CONGRESS] [1ST SESSION

HOUSE REPORT ON SUNDAY MAILS.[1]

March 4, 1830.

COMMUNICATED TO HOUSE OF REPRESENTATIVES, MARCH 4, 5, 1830.

Report of House committee.

Mr. Johnson, of Kentucky, from the Committee on the Post-offices and Post-roads, to whom had been referred memorials from inhabitants of various parts of the United States, praying for a repeal of so much of the post-office law as authorizes the mail to be transported and opened on Sunday, and to whom had also been referred memorials from other inhabitants of various parts of the United States remonstrating against such repeal, made the following report:

Memorialists regard the first day as sacred.

That the memorialists regarded the first day of the week as a day set apart by the Creator for religious

[1] "American State Papers," Class VII, page 229. This and the preceding report are the last extended congressional reports upon the subject of Sunday legislation. The question is presented with logic, force, and clearness, and the reports are able papers upon the subject of Sunday legislation. In a document submitted to the Senate Committee on Education and Labor, the following statement is reluctantly made by a friend of religious legislation, the Rev. T. P. Stevenson, D. D., corresponding secretary of the National Reform Association and an editor of the "Christian Statesman:"

The last congressional decision.

"The decision then reached remains to-day as the latest decision, and the report which recommended it as the latest utterance of the American Congress on the subject to which it refers. For fifty-one years it has stood without reply and without protest. . . . Ought that report and that decision to remain any longer on the records of the government, and to operate as they are still operating in the minds of the people, without re-argument and without protest? Whatever the issue of the present effort, it cannot make the situation worse than it is to-day. *Nothing could be worse than the last recorded decision of the government in the terms of the above report!*" "Senate Miscellaneous Documents," No. 43, page 36 (50th Congress, 2nd Session, December 13, 1888).

Statement of a Sunday-rest agitator.

Such sentiments would have been more appropriate two hundred years ago than they are in this enlightened age. We could wish that the spirit of the Revolution,— the spirit of Washington, Jefferson, and Madison,— the spirit so well expressed in these reports,— might not die out as time goes on; but the intolerant spirit that is now and then manifested in various States, would seem to indicate otherwise.

Ground of objection.

exercises, and consider the transportation of the mail and the opening of the post-offices on that day the violation of a religious duty, and call for a suppression of the practice.[1]

Sunday movements

[1] This is the substratum of all Sunday agitation. All the Sunday movements in history have been led by the clergy. In the Senate hearing of December 13, 1888, the most prominent in our national history, of those making remarks in favor of Sunday legislation, *nine were clergymen*, two representatives of *State Sabbath Unions*, one a representative of the *Sabbath observance department* of the National Woman's Christian Temperance Union, and *only one* other representative of a secular organization (a temperance society), who was not a minister.

Rev. Wilbur F. Crafts, a leading apostle of Sunday legislation, in a document submitted by him to the Senate Committee on Education and Labor, at the hearing on the Sunday-rest bill, December 13, 1888, says:

No Sabbath without a religious basis.

"A weekly day of rest has never been permanently secured in any land except on the basis of religious obligation. Take the religion out, and you take the rest out." "Senate Miscellaneous Documents," No. 43, page 21 (50th Congress, 2nd Session, December 13, 1888).

Parental government upheld.

Again he says: "Liberty is a gain, but it has its perils. . . . A large degree of freedom is not safe for children, large or small. Even a republican government is compelled to parent such of its people as are not capable of self-government, until they have learned the art." "The Sabbath for Man," page 192.

And in an address in Denver, Rev. Mr. Crafts said:

Sunday laws must be based on the law of God.

"No laws will avail anything if they are not on the basis of religion. Mount Sinai is the only true basis of all Sabbath legislation." "Daily Rocky Mountain News," Denver, Colorado, February 9, 1890.

Joseph Cook, also, in 1887, in one of his celebrated Boston Monday lectures, said:

Religion its only basis.

"The experience of centuries shows that you will in vain endeavor to preserve Sunday as a day of rest, unless you preserve it as a day of worship. Unless Sabbath observance be founded upon religious reasons, you will not long maintain it at a high standard on the basis of economic, physiological, and political considerations only."

In the various Sabbath conventions of the country, speeches and papers are even more outspoken in favor of a religious and against a "civil" Sabbath.

Dr. A. H. Lewis, also, in the preface (pages viii, ix) to his work, "A Critical History of Sunday Legislation," says:

All Sunday laws based on religion.

"Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries. Every Sunday law sprung from a religious sentiment. Under the pagan conception, the day was to be 'venerated' as a religious duty owed to

Others, by counter memorials, are known to entertain a different sentiment, believing that no one day of the week is holier than another. Others, holding the universality and immutability of the Jewish decalogue, believe in the sanctity of the seventh day of the week as a day of religious devotion, and, by their memorial now before the committee, they also request that it may be set apart for religious purposes. *Each has hitherto been left to the exercise of his own opinion, and it has been regarded as the proper business of government to protect all and determine for none.*[1] But the attempt is now made to

Variety of sentiments.

Government should protect all, but determine for none.

the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was claimed for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from the religious standpoint. There can be no 'worldly business,' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."

Puritan idea.

Evidence in the laws themselves.

Religious idea apparent.

Scientific ideas have never been the basis of Sunday legislation.

Contrary claims a denial of history.

A shallow subterfuge.

[1] The English philosopher, John Stuart Mill, says:

"Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation."

Sunday laws infringe liberty.

And in reference to laws forbidding Sunday pastimes, Mr. Mill says:

"The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong; a motive of legislation which can never be too earnestly protested against. '*Deorum injuriæ Diis curæ.*' It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-

Cannot be too strongly protested against.

bring about a greater uniformity, at least in practice; and, as argument has failed, the government has been called upon to interpose its authority to settle the controversy.[1]

As argument fails, force is solicited.

Authority of Congress.

Congress acts under a Constitution of delegated and limited powers. The committee look in vain to that instrument for a delegation of power authorizing this body to inquire and determine what part of time, or whether any, has been set apart by the Almighty for religious exercises. *On the contrary, among the few prohibitions which it contains, is one that prohibits a religious test, and another which declares that*

Prohibited from legislating on religion.

Foundation of all religious persecutions.

creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested." "On Liberty," chapter 4, paragraph 19.

A statement of the case.

[1] In reference to the tendency of mankind to enforce upon others *their* opinions and *their* customs, John Stuart Mill makes the following important observation:

Tendency of humanity.

"Apart from the peculiar tenets of individual thinkers, there is also in the world at large an increasing inclination to stretch unduly the powers of society over the individual, both by the force of opinion and even by that of legislation; and as the tendency of all the changes taking place in the world is to strengthen society, and diminish the power of the individual, this encroachment is not one of the evils which tend spontaneously to disappear, but, on the contrary, to grow more and more formidable. The disposition of mankind, whether as rulers or as fellow-citizens, to impose their own opinions and inclinations as a rule of conduct on others, is so energetically supported by some of the best and by some of the worst feelings incident to human nature, that it is hardly ever kept under restraint by anything but want of power; and as the power is not declining, but growing, unless a strong barrier of moral conviction can be raised against the mischief, we must expect, in the present circumstances of the world, to see it increase." "On Liberty," chapter 1.

Disposition of mankind to impose their opinions on others.

This power increasing.

Congress shall pass no law respecting the establishment of religion, or prohibiting the free exercise thereof.[1]

Congress to make no law respecting religion.

The committee might here rest the argument upon the ground that the question referred to them does not come within the cognizance of Congress; but the perseverance and zeal with which the memorialists pursue their object seems to require a further elucidation of the subject; and, as the opposers of Sunday mails disclaim all intention to unite church and state, the committee do not feel disposed to impugn their motives; and whatever may be advanced in opposition to the measure will arise from the fears entertained of its fatal tendency to the peace and happiness of the nation. The catastrophe of other nations furnished the framers of the Constitution a beacon of awful warning, and they have evinced the greatest possible care in guarding against the same evil.

Further elucidation required.

Experience of other nations a warning.

The law, as it now exists, makes no distinction as to the days of the week, but is imperative that the postmasters shall attend at all reasonable hours in every day to perform the duties of their offices; and the Postmaster-General has given his instructions to all postmasters that, at post-offices where the mail arrives on Sunday, the office is to be kept open one hour or more after the arrival and assorting the mail; but in case that would interfere with the hours of public worship, the office is to be kept open for one hour after the usual time of dissolving the meeting.

Law now makes no distinction of days of week.

[1] On this point, Jefferson, in his second inaugural address, March 4, 1805, spoke as follows:

"In matters of religion, I have considered that its free exercise is placed by the Constitution *independent of the powers of the general government.* I have therefore undertaken, on no occasion, to prescribe the religious exercises suited to it; but have left them, as the Constitution found them, under the direction and discipline of state or church authorities acknowledged by the several religious societies."

Religion placed independent of government.

No just ground of complaint.

This liberal construction of the law does not satisfy the memorialists; but the committee believe that there is no just ground of complaint, unless it be conceded that they have a controlling power over the consciences of others.[1]

A question on which even Christians differ among themselves.

Incompatible with a republican legislature.

If Congress shall, by the authority of law, sanction the measure recommended, it would constitute a legislative decision of a religious controversy, in which even Christians themselves are at issue. However suited such a decision may be to an ecclesiastical council, it is incompatible with a republican legislature, which is purely for political, and not for religious, purposes.

In our individual character we all entertain opinions, and pursue a corresponding practice, upon the subject of religion. However diversified these may be, we all harmonize as citizens, while *each is willing that the other shall enjoy the same liberty which he claims for himself.* But, in our representative character, our individual character is lost. The individual acts for himself; the representative for his constituents. He is chosen to represent their *political*, and not their *religious*, views; to guard the rights of man, not to restrict the rights of conscience.

A statesman is not to represent his constituents' religious views.

Usurpation of the divine prerogative.

Despots may regard their subjects as their property, and usurp the divine prerogative of prescribing their religious faith; but the history of the world

[1] "Let us suppose," says John Stuart Mill, "that the government is entirely at one with the people, and never thinks of exerting any power of coercion unless in agreement with what it conceives to be their voice. But I deny the right of the people to exercise such coercion, either by themselves or by their government. *The power itself is illegitimate.* The best government has no more title to it than the worst. It is as noxious, or more noxious, when exerted in accordance with public opinion, than when in opposition to it. If all mankind minus one, were of one opinion, and *only one person* were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind." "On Liberty," chapter 2, paragraph 1. The principle here stated is the only one compatible with liberty.

Coercion in matters of opinion illegitimate.

Especially noxious when supported by public opinion.

A noble statement.

furnishes the melancholy demonstration that the disposition of one man to coerce the religious homage of another, springs from an unchastened ambition, rather than [from] a sincere devotion to any religion.

Disposition to coerce religious homage springs from an unhallowed ambition

The principles of our government do not recognize in the majority any authority over the minority, except in matters which regard the conduct of man to his fellow-man.[1]

Majority has no authority over minority in religion.

[1] In an essay on "Railway Morals and Railway Policy," published in the "Edinburgh Review" for October, 1854, Herbert Spencer had occasion to deal with the question of a majority's powers as exemplified in the conduct of public companies. The same principle is true of governments, or of any other organizations. Mr. Spencer says:

Essay of Mr. Herbert Spencer.

"Under whatever circumstances, or for whatever ends, a number of men co-operate, it is held that if difference of opinion arises among them, justice requires that the will of the greater number shall be executed, rather than that of the smaller number; and this rule is supposed to be uniformly applicable, be the question at issue what it may. So confirmed is this conviction, and so little have the ethics of the matter been considered, that to most this mere suggestion of a doubt will cause some astonishment. Yet it needs but a brief analysis to show that the opinion is little better than a political superstition. Instances may readily be selected, which prove by *reductio ad absurdum*, that the right of a majority is a purely conditional right, *valid only within specific limits*. Let us take a few. Suppose that at the general meeting of some philanthropic association, it was resolved that in addition to relieving distress, the association should employ home missionaries to preach down popery. Might the subscriptions of Catholics, who had joined the body with charitable views, be rightfully used for this end? Suppose that of the members of a book club, the greater number, thinking that under existing circumstances rifle practice was more important than reading, should decide to change the purpose of their union, and to apply the funds in hand for the purchase of powder, ball, and targets? Would the rest be bound by this decision? Suppose that under the excitement of news from Australia, the majority of a Freehold Land Society should determine, not simply to start in a body for the gold-diggings, but to use their accumulated capital to provide outfits. Would this appropriation of property be just to the minority? and must these join the expedition? Scarcely any one would venture an affirmative answer even to the first of these questions; much less to the others. And why? Because every one must perceive that by uniting himself with others, no man can equitably be betrayed into acts utterly foreign to the purpose for which he joined them. Each of these supposed minorities would

Right of the majority valid only within specific limits.

Usurpation of authority.

'A Jewish monarch, by grasping the holy censer, lost both his scepter and his freedom. A destiny as

A sound argument for the minority.

properly reply to those seeking to coerce them: 'We combined with you for a defined object; we gave money and time for the furtherance of that object; on all questions thence arising, we tacitly agreed to conform to the will of the greater number; but we did not agree to conform on any other questions. If you induce us to join you by professing a certain end, and then undertake some other end of which we were not apprised, you obtain our support under false pretenses; *you exceed the expressed or understood compact to which we committed ourselves; and we are no longer bound by your decisions.*' Clearly this is the only rational interpretation of the matter. The general principle underlying the right government of every incorporated body, is that its members contract with each other severally to submit to the will of the majority *in all matters concerning the fulfilment of the objects for which they were incorporated; but in no others.* To this extent only can the contract hold. For as it is implied in the very nature of a contract, that those entering into it must know what they contract to do; and as those who unite with others for a specified object, cannot contemplate all the unspecified objects, which it is hypothetically possible for the union to undertake; it follows that the contract entered into cannot extend to such unspecified objects. And if there exists no expressed or understood contract between the union and its members respecting unspecified objects, *then for the majority to coerce the minority into undertaking them, is nothing less than gross tyranny.*"

Minority not bound by actions of majorities foreign to compact.

Sphere of the majority.

Coercion in objects foreign to contract is gross tyranny.

And, subsequently in another essay, he added:

"Naturally, if such a confusion of ideas exists in respect of the powers of a majority where the deed of corporation tacitly limits those powers, still more must there exist such a confusion where there has been no deed of incorporation. Nevertheless the same principle holds. I again emphasize the proposition that the members of an incorporated body are bound 'severally to submit to the will of the majority *in all matters concerning the fulfilment of the objects for which they are incorporated; but in no others.*' And I contend that this holds of an incorporated nation as much as of an incorporated company."

Sphere of the majority.

And Professor Francis Lieber says:

"Liberty has not unfrequently been defined as consisting in the rule of the majority; or, it has been said, where the people rule, there is liberty. The rule of the majority, of itself, indicates the power of a certain body; but power is not liberty. Suppose the majority bid you drink hemlock, is there liberty for you? Or, suppose the majority give away liberty and establish a despot. We might say with greater truth, *that where the minority is protected*, although the majority rule, then, probably, liberty exists. But in this latter case it is the *protection*, or in other words, *rights beyond the reach of the majority*, which constitute

Rule of majority not necessarily liberty.

Rights of minority must be protected.

little to be envied may be the lot of the American people, who hold the sovereignty of power, if they, in the person of their representatives, shall attempt to unite, *in the remotest degree*, church and state.

A possible consequence of religious legislation.

From the earliest period of time, religious teachers have attained great ascendency over the minds of the people; and in every nation, ancient or modern, whether pagan, Mahometan, or Christian, have succeeded in the incorporation of their religious tenets with the political institutions of their country. The Persian idols, the Grecian oracles, the Roman auguries, and the modern priesthood of Europe, have all, in their turn, been the subject of popular adulation, and the agents of political deception. *If the measure recommended should be adopted, it would be difficult for human sagacity to foresee how rapid would be the succession, or how numerous the train of measures which follow, involving the dearest rights of all — the rights of conscience.*

Religious teachers of the past.

All nations have been united with some religion.

Dangerous consequences likely to result from Sunday legislation.

It is perhaps fortunate for our country that the proposition should have been made at this early period while the spirit of the Revolution yet exists in full vigor.[1] Religious zeal enlists the strongest prejudices

Opportune time for consideration of proposition.

liberty, — not the power of the majority. There can be no doubt that the majority ruled in the French massacres of the Protestants; was there liberty in France on that account? All despotism, without a standing army, must be supported or acquiesced in, by the majority. It could not stand otherwise." "On Civil Liberty and Self-Government" (London, 1853), page 15.

Despotism of majorities.

[1] Jefferson foresaw the same retrogradation in public opinion on the matter of the individual's religious rights. He stated explicitly that from the close of the Revolution public opinion would "be going down hill." In Query xvii, of his "Notes on Virginia," he says in closing:

Foresight of Jefferson.

"Besides, *the spirit of the times may alter, will alter.* Our rulers will become corrupt, our people careless. A single zealot may commence persecution, and better men be his victims. It can never be too often repeated, that the time for fixing every essential right on a legal basis is while our rulers are honest, and ourselves united. From the conclusion of this war we shall be going down hill. It will not then be necessary to resort every moment to the people for support. They

Alteration in public opinion.

Prejudice in religion.

of the human mind ; and, when misdirected, excites the worst passions of our nature, under the delusive pretext of doing God service. Nothing so infuriates the heart to deeds of rapine and blood ; nothing is so incessant in its toils, so persevering in its determinations, so appalling in its course, or so dangerous in its consequences. The equality of rights, secured by the Constitution, may bid defiance to mere political tyrants ; but the robe of sanctity too often glitters to deceive. *The Constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a solitary individual than that of a whole community.* That representative who would violate this principle would lose his delegated character, and forfeit the confidence of his constituents.

Religious professions may destroy our equality of rights.

Jew and Christian equal.

Declarations of Congress will convince none.

If Congress shall declare the first day of the week holy, it will not convince the Jew nor the Sabbatarian. It will dissatisfy both, and, consequently, convert neither. Human power may extort vain sacrifices, but the Deity alone can command the affections of the heart.[1]

Spirit of persecution in America.

It must be recollected that in the earliest settlement of this country, the spirit of persecution which drove the Pilgrims from their native home was brought with them to their new habitations, and that some Christians were scourged, and others put to death, for no other crime than dissenting from the dogmas of their rulers.

Rights of people will be disregarded.

Remaining shackles will be a constant menace.

will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. *The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier, till our rights shall revive or expire in a convulsion.*"

Enactments against irreligion provoke it.

[1] "Positive enactments against irreligion," says George Bancroft, "like positive enactments against fanaticism, provoke the evil which they were designed to prevent."

Regret that such a question should be raised.

With these facts before us, it must be a subject of deep regret that a question should be brought before Congress which involves the dearest privileges of the Constitution, and even by those who enjoy its choicest blessings. *We* should all recollect that Cataline, a professed patriot, was a traitor to Rome; Arnold, a professed Whig, was a traitor to America; and Judas, a professed disciple, was a traitor to his divine Master.

Religious bondage of the world.

With the exception of the United States, the whole human race, consisting, it is supposed, of eight hundred million of rational beings, is in religious bondage; and, in reviewing the scenes of persecution which history everywhere presents, unless the committee could believe that the cries of the burning victim, and the flames by which he is consumed, bear to heaven a grateful incense, the conclusion is inevitable that the line cannot be too strongly drawn between church and state. If a solemn act of legislation shall, in *one* point, define the law of God, or point out to the citizen *one* religious duty, it may, with equal propriety, proceed to define *every* part of divine revelation, and enforce *every* religious obligation, even to the forms and ceremonies of worship, the endowment of the church, and the support of the clergy.

Line cannot be too closely drawn between church and state.

If legislature can define *one* religious duty, it may define *all*.

False professions.

It was with a kiss that Judas betrayed his divine Master; and we should all be admonished — no matter what our faith may be — that the rights of conscience cannot be so successfully assailed as under the pretext of holiness. The Christian religion made its way into the world in opposition to all human governments. Banishment, tortures, and death were inflicted in vain to stop its progress. But many of its professors, as soon as clothed with political power, lost the meek spirit which their creed inculcated, and began to inflict on other religions, and on dissenting sects of their own religion, persecutions more

Rights can be most successfully assailed under pretext of holiness.

Persecutions by state Christianity.

aggravated than those which their own apostles had endured.[1]

[1] Scarcely had the Christian church the law in her hands before she began to persecute. Gibbon says:

Toleration of the fourth century.

"The Edict of Milan [A. D. 313], the great charter of toleration, had confirmed to each individual of the Roman world the privilege of choosing and professing his own religion. But this inestimable privilege

Influence of orthodox Christianity.

was soon violated; with the knowledge of truth the emperor imbibed the maxims of persecution; and the sects which dissented from the Catholic Church [which was orthodox], were afflicted and oppressed by the triumph of Christianity. Constantine easily believed that the heretics, who presumed to dispute *his* opinions, or to oppose *his* commands, were guilty of the most absurd and criminal obstinacy. . . . Not a

Persecution immediately follows its establishment.

moment was lost [after Christianity had been established] in excluding the ministers and teachers of the separated congregations from any share of the rewards and immunities which the emperor had so liberally bestowed on the orthodox clergy. But as the sectaries might still exist under the cloud of royal disgrace, the conquest of the East was immedi-

Total destruction of "heretics."

ately followed by an edict which announced their total destruction. [Eusebius's "Life of Constantine," 1, iii, chapters 63, 66.] After a preamble filled with passion and reproach, Constantine absolutely prohibits the assemblies of the heretics, and confiscates their public property to the use either of the revenue or of the Catholic Church. The design of extirpating the name, or at least of restraining the progress, of these odious heretics, was prosecuted with rigor and effect. Some of the penal regulations were copied from the edicts of Diocletian; *and this*

Applauded by state-church advocates.

method of conversion was applauded by the same bishops who had felt the hand of oppression, and had pleaded for the rights of humanity." "Decline and Fall of the Roman Empire," chapter 21, paragraph 1.

Establishment of Christianity.

It was Christianity, too, as a whole, and not any particular belief, that Constantine had established as the religion of the state. In Eusebius's "Life of Constantine," book ii, chapter 66, we find the following in the letter of Constantine to Alexander and Arius:

"For I was aware that if I should succeed in establishing, according to my hopes, a common harmony of sentiment among *all the servants of God*, the general course of affairs would also experience a change correspondent to the pious desires of them all."

And in the edict of Constantine on polytheism, we read:

"*Victor Constantinus, Maximus Augustus, to the people of the Eastern provinces:* . . .

Edict of Constantine.

"My own desire is, for the general advantage of the world and all mankind, that thy people should enjoy a life of peace and undisturbed concord. Let those, therefore, who are still blinded by error, be made welcome to the same degree of peace and tranquillity which they have who believe. For may be that this restoration of equal privileges to all

The ten persecutions of the pagan emperors were exceeded in atrocity by the massacres and murders perpetrated by Christian hands; and in vain shall we examine the records of imperial tyranny for an engine of cruelty equal to the *holy Inquisition*.[1] *Every religious sect, however meek in its origin, commenced the work of persecution as soon as it acquired political power.*

Pagan persecutions exceeded in atrocity by "Christian" persecutions.

All religions persecute on acquiring power.

The framers of the Constitution recognized the eternal principle that man's relation with his God is above human legislation, and his rights of conscience inalienable.[2] Reasoning was not necessary to estab-

Religion above human legislation.

will have a powerful effect in leading them into the path of truth. Let no one molest another in this matter; but let every one be free to follow the bias of his own mind." "Life of Constantine," book ii, chapter 56.

[1] "There are many," says Thomas Clarke, "who do not seem to be sensible that all violence in religion is irreligious, and that, whoever is wrong, the persecutor cannot be right."

Persecutor necessarily wrong.

[2] "The United States furnishes the first example in history of a government deliberately depriving itself of all legislative control over religion, which was justly regarded by all older governments as the chief support of public morality, order, peace, and prosperity. But it was an act of wisdom and justice, rather than self-denial. Congress was shut up to this course by the previous history of the American colonies, and the actual condition of things at the time of the formation of the national government. The Constitution did not create a nation, nor its religion and institutions. It found them already existing, and was framed for the purpose of protecting them under a republican form of government, in a rule of the people, by the people, and for the people. . . .

America the first to recognize religious rights.

"The framers of the Constitution, therefore, had no right and no intention to interfere with the religion of the citizens of any State, or to discriminate between denominations; their only just and wise course was to leave the subject of religion with the several States, to put all churches on an equal footing before the national law, and to secure to them equal protection. Liberty of all is the best guarantee of the liberty of each.

Government no right or intention to interfere with religion.

"North America was predestinated from the very beginning for the largest religious and civil freedom, however imperfectly it was understood by the first settlers. It offered a hospitable home to emigrants of all nations and creeds. The great statesmen of the Philadelphia convention recognized this providential destiny, and adapted the Constitution to it. They could not do otherwise. To assume the control of religion

Liberty in America.

The principle self-evident.

lish this truth; we are conscious of it in our own bosoms.[1] It is this consciousness which, in defiance

Any control of religion an act of usurpation.

American system.

in any shape, except by way of protection, would have been an act of usurpation, and been stoutly resisted by all the States.

"Thus Congress was led by Providence to establish a new system, which differed from that of Europe and the colonies, and set an example to the several States for imitation." Philip Schaff, in "Church and State in the United States," page 23 *et seq.*

[1] Speaking of this innate sense, Herbert Spencer argues as follows:

Inherent sense of individual rights.

"But that we possess such a sense, may be best proved by evidence drawn from the lips of those who assert that we have it not. Oddly enough Bentham unwittingly derives his initial proposition from an oracle whose existence he denies, and at which he sneers when it is appealed to by others. 'One man,' he remarks, speaking of Shaftesbury, 'says he has a thing made on purpose to tell him what is right and what

Moral sense of man.

is wrong; and that it is called *moral sense;* and then he goes to work at his ease, and says such and such a thing is right, and such and such a thing is wrong. Why? "Because my moral sense tells me it is."' Now that Bentham should have no other authority for his own maxim than this same moral sense, is somewhat unfortunate for him. Yet on putting that maxim into critical hands, we shall soon discover such to be the fact. Let us do this.

A critical cross-examination.

"'And so you think,' says the patrician, 'that the object of our rule should be "the greatest happiness to the greatest number."'

"'Such is our opinion,' answers the petitioning plebeian.

"'Well, now, let us see what your principle involves. Suppose men to be, as they very commonly are, at variance in their desires on some given point; and suppose that those forming the larger party will receive a certain amount of happiness each, from the adoption of one course, whilst those forming the smaller party will receive the same amount of happiness each, from the adoption of the opposite course: then if "greatest happiness" is to be our guide, it must follow, must it not, that the larger party ought to have their way?'

"'Certainly.'

"'That is to say, if you, the people, are a hundred, whilst we are ninety-nine, your happiness must be preferred, should our wishes clash, and should the individual amounts of gratification at stake on the two sides be equal.'

"'Exactly; our axiom involves that.'

"'So then it seems, that as, in such a case, you decide between the two parties by numerical majority, you assume that the happiness of a member of the one party, is equally important with that of a member of the other.'

"'Of course.'

"'Wherefore, if reduced to its simplest form, your doctrine turns

of human laws, has sustained so many martyrs in tortures and in flames. They *felt* that their duty to

Sustentation of the martyrs.

out to be the assertion that all men have equal claims to happiness; or, applying it personally, that you have as good a right to happiness as I have.'

Equality of rights.

"'No doubt I have.'

"'And pray, sir, who told you that you have as good a right to happiness as I have?'

Source of information.

"'Who told me? — I am sure of it; I know it; I feel it; I —'

"'Nay, nay, that will not do. Give me your authority. Tell me who told you this — how you got at it — whence you derived it.'

"Whereupon, after some shuffling, our petitioner is forced to confess that he has no other authority but his own feeling — that he has simply an innate perception of the fact; or, in other words, that 'his moral sense tells him so.'

Proposition reluctantly admitted.

"In truth, none but those committed to a preconceived theory, can fail to recognize, on every hand, the workings of such a faculty. From early times downward there have been constant signs of its presence — signs which happily thicken as our own day is approached. The articles of Magna Charta embody its protests against oppression, and its demands for a better administration of justice. Serfdom was abolished partly at its suggestion. It encouraged Wickliffe, Huss, Luther, and Knox, in their contests with popery: and by it were Huguenots, Covenanters, Moravians, stimulated to maintain freedom of judgment in the teeth of armed ecclesiasticism. It dictated Milton's 'Essay on the Liberty of Unlicensed Printing.' It piloted the Pilgrim Fathers to the New World. It supported the followers of George Fox under fines and imprisonment. And it whispered resistance to the Presbyterian clergy of 1662. In latter days it emitted that tide of feeling which undermined and swept away Catholic disabilities. Through the mouths of anti-slavery orators, it poured out its fire, to the scorching of the selfish, to the melting of the good, to our national purification. It was its heat, too, which warmed our sympathy for the Poles, and made boil our indignation against their oppressor. Pent-up accumulations of it, let loose upon a long-standing injustice, generated the effervescence of a reform agitation. Out of its growing flame came those sparks by which protectionist theories were exploded, and that light which discovered to us the truths of free trade. By the passage of its subtle current is that social *electrolysis* effected, which classes men into parties, which separates the nation into its positive and negative, its radical and conservative elements. At present it puts on the garb of anti-state-church associations, and shows its presence in manifold societies for the extension of popular power. It builds monuments to political martyrs, agitates for the admission of Jews into Parliament, publishes books on the rights of women, petitions against class legislation, threatens to rebel against militia con-

Evidences of its existence.

Its force in reform movements.

Present manifestations.

Rights now demanded.

Duty to God paramount.

A principle that cannot be eradicated. It is virtually recognized, even by the bigot.

God was superior to human enactments, and that man could exercise no authority over their consciences. *It is an inborn principle which nothing can eradicate.* The bigot, in the pride of his authority, may lose sight of it; but, strip him of his power, prescribe a faith to him which his conscience rejects, threaten him in turn with the dungeon and the fagot, and the spirit which God has implanted in him rises up in rebellion, and defies you.

Primitive Christianity did not ask governments to recognize its religious institutions.

Did the primitive Christians ask that government should recognize and observe their religious institutions? All they asked was toleration; all they complained of was persecution. What did the Protestants of Germany, or the Huguenots of France, ask of their Catholic superiors? Toleration. What do the persecuted Catholics of Ireland ask of their oppressors? Toleration. Do not all men in this country enjoy every religious right which martyrs and saints ever asked? Whence, then, the voice of complaint? Who is it that, in the full enjoyment of every principle which human laws can secure, wishes to wrest a portion of these principles from his neighbor?[1]

All now enjoy their religious rights.

Why wrest these rights from our neighbor?

scriptions, refuses to pay church-rates, repeals oppressive debtor acts, laments over the distresses of Italy, and thrills with sympathy for the Hungarians. From it, as from a root, spring our aspirations after social rectitude: it blossoms in such expressions as — 'Do as you would be done by,' 'Honesty is the best policy,' 'Justice before generosity;' and its fruits are equity, freedom, safety." "Social Statics," introduction, page 33 *et seq.*

Evidence in our maxims.

Jefferson emphasized this same point in a letter to Dr. John Manners, dated at Monticello, June 12, 1817: "The evidence of this natural right [expatriation], like that of our right to life, liberty, the use of our faculties, the pursuit of happiness, is not left to the feeble and sophistical investigations of reason, but is impressed on the sense of every man. We do not claim these under the charters of kings or legislators, but under the King of kings."

Innate sense of rights.

Doctrine of the intolerant.

[1] "The doctrine which," says Lord Macaulay, "from the very first origin of religious dissensions, has been held out by all bigots of all sects, when condensed into a few words, and stripped of rhetorical disguise, is simply this: I am in the right, you are in the wrong. When

Pointed questions.

Do the petitioners allege that they cannot conscientiously participate in the profits of the mail contracts and post-offices, because the mail is carried on Sunday? If this be their motive, then it is worldly gain which stimulates to action, and not virtue or religion. Do they complain that men less conscientious in relation to the Sabbath obtain advantages over them by receiving their letters and attending to their contents? Still their motive is worldly and selfish. But if their motive be to induce Congress to sanction, by law, their *religious opinions* and *observances*, then their efforts ought to be resisted, as in their tendency fatal both to religious and political freedom.

Any attempts to sanction, by law, religious observances, should be resisted.

Why have the petitioners confined their prayer to the mails? Why have they not requested that the government be required to suspend *all* its executive functions on that day? Why do they not require us to enact that our ships shall not sail; that our armies shall not march; that officers of justice shall not seize the suspected or guard the convicted? They seem to forget that government is as necessary on Sunday as on any other day of the week. The spirit of evil does not rest on that day. It is the government, ever active in its functions, which enables us all, even the petitioners, to worship in our churches in peace.

Government as necessary on Sunday as on other days.

Our government furnishes very few blessings like our mails. They bear from the center of our republic to its distant extremes the acts of our legislative bod-

Our government furnishes few blessings like our mails.

you are the stronger, you ought to tolerate me; for it is your duty to tolerate truth. But when I am the stronger, I shall persecute you; for it is my duty to persecute error." Essay on "Sir James Mackintosh."

And John Fiske says:

"Cotton, in his elaborate controversy with Roger Williams, frankly asserted that persecution is not wrong in itself; it is wicked for falsehood to persecute truth, but it is the sacred duty of truth to persecute falsehood." "The Beginnings of New England," page 178.

A popular doctrine among Christians.

Usefulness of the mails.

ies, the decisions of the judiciary, and the orders of the executive. Their speed is often essential to the defense of the country, the suppression of crime, and the dearest interests of the people. Were they suppressed one day of the week, their absense must be often supplied by public expresses; and, besides, while the mail bags might rest, the mail coaches would pursue their journey with the passengers. The mail bears, from one extreme of the Union to the other, letters of relatives and friends, preserving a communion of heart between those far separated, and increasing the most pure and refined pleasures of our existence; also, the letters of commercial men convey the state of the markets, prevent ruinous speculations, and promote general as well as individual interest; they bear innumerable religious letters, newspapers, magazines, and tracts, which reach almost every house throughout this wide republic. Is the conveyance of these a violation of the Sabbath?

Human advancement depends, in part, upon rapidity of dissemination of knowledge.

The advance of the human race in intelligence, in virtue, and religion itself, depends, in part, upon the speed with which a knowledge of the past is disseminated. Without an interchange between one country and another, and between different sections of the same country, every improvement in moral or political science and the arts of life, would be confined to the neighborhood where it originated. The more rapid and the more frequent this interchange, the more rapid will be the march of intellect and the progress of improvement. The mail is the chief means by which intellectual light irradiates to the extremes of the republic. Stop it one day in seven, and you retard one seventh of the advancement of our country.

Stopping mails retards our advancement.

Greater extension of mail system recommended.

So far from stopping the mail on Sunday, the committee would recommend the use of all reasonable

means to give it a greater expedition and a greater extension. What would be the elevation of our country if every new conception could be made to strike every mind in the Union at the same time? It is not the distance of a province or State from the seat of government which endangers its separation; but it is the difficulty and unfrequency of intercourse between them. Our mails reach Missouri and Arkansas in less time than they reached Kentucky and Ohio in the infancy of their settlements; and now, when there are three million of people extending a thousand miles west of the Alleghany, we hear less of discontent than when there were a few thousands scattered along their western base. To stop the mails one day in seven would be to thrust the whole western country, and other distant parts of this republic, one day's journey from the seat of government.

Importance of rapid communication.

Improvement of mail system.

Effect of stopping mails one day in seven.

But, were it expedient to put an end to the transmission of letters and newspapers on Sunday because it violates the law of God, have not the petitioners begun wrong in their efforts? If the arm of government be necessary to compel men to respect and obey the laws of God, do not the State governments possess infinitely more power in this respect? Let the petitioners turn to *them*, and see if they can induce the passage of laws to respect the observance of the Sabbath; for, if it be sinful for the mail to carry letters on Sunday, it must be equally sinful for individuals to write, carry, receive, or read them. It would seem to require that these acts should be made penal to complete the system. Traveling on business or recreation, except to and from church; all printing, carrying, receiving, and reading of newspapers; all conversations and social intercourse, except upon religious subjects, must necessarily be punished to suppress the evil. Would it not also follow, as an inevitable consequence, that every man,

Why are petitions sent to the national government?

Logical outcome of Sunday legislation.

A natural deduction.

woman, and child should be compelled to attend meeting?[1] And, as only one sect, in the opinion of some, can be deemed orthodox, must it not be determined by law which *that* is, and compel all to hear those teachers, and contribute to their support?[2]

Compulsory Sunday observance logically implies compulsory church attendance.

[1] The logical consequence of taking the first step in Sunday legislation here indicated was followed out by the early colonists. Church attendance was required; travelling, except to and from church, ordinary labor, and all amusements on Sunday were forbidden — everything the religious leaders and lawmakers of the time considered a desecration of the day. See samples of these laws, Part I, pages 33-58. All the States, save California, have retained their Sunday laws. National Sunday legislation is again demanded, with a cry against Sunday amusements, excursions, etc., all with a view to church attendance. If conceded, where will it end?

[2] The principle is the same whether it be *preachers* or *teachers*. Both teach religion; and the money with which they are paid is raised by general taxation. Commenting upon the theory of some that the state has the right to teach religion, Mr. Herbert Spencer says:

Necessary decisions in providing for religious instruction.

Responsibility of the state.

Questions to be decided.

"Before state-paid ministers can be set to preach, it must first be decided *what* they are to preach. And who is to say? Clearly, the state. Either it must itself elaborate a creed, or it must depute some man or men to do so. It must in some way sift out truth from error, and cannot escape the responsibility attending this. If it undertakes itself to settle the doctrines to be taught, it is responsible. If it adopts a ready-made set of doctrines, it is equally responsible. And if it selects its doctrines by proxy, it is still responsible, both as appointing those who choose for it, and as approving their choice. Hence, to say that a government ought to set up and maintain a system of religious instruction, is to say that it ought to pick out from amongst the various tenets that men hold or have held, those which are right; and that, when it has done this — when it has settled between the Roman Catholic, the Greek, the Lutheran, and the Anglican creeds, or between the Puseyite, High Church, and Evangelical ones — when it has decided whether we should be baptized during infancy or at a mature age, whether the truth is with Trinitarians or Unitarians, whether men are saved by faith or by works, whether pagans go to hell or not, whether ministers should preach in black or white, whether confirmation is scriptural, whether or not saints' days should be kept, and (as we have lately seen it debating) whether baptism does or does not regenerate — when, in short, it has settled all those controversies which have split mankind into innumerable sects, it ought to assert that its judgment is incapable of error — is unquestionable — is beyond appeal. There is no alternative. Unless the state says this, it convicts itself of the most absurd inconsistency. Only on the supposition of infallibility can its ecclesiastical doings be made to

If minor punishments[1] would not restrain the Jew, or the Sabbatarian, or the infidel, who believes Sat- Important question.

seem tolerable. How else shall it demand rates and tithes of the dissenter? What answer can it make to his expostulations?

"'Are you quite sure about these doctrines of yours?' inquires the dissenter. The question interrogatively presented.

"'No,' replies the state; 'not quite sure, but nearly so.'

"'Then, it is just possible you may be wrong, is it not?'

"'Yes.'

"'And it is just possible that I may be right, is it not?'

"'Yes.'

"'Yet you threaten to inflict penalties upon me for non-conformity! You seize my goods; you imprison me if I resist; and all to force from me the means to preach up doctrines which you admit *may* be false, and by implication to preach down doctrines which you admit *may* be true! How do you justify this?' Injustice to the individual

"No reply.

"Evidently, therefore, if the state persists, the only position open to it is that its judgment *cannot* be mistaken — that its doctrines *cannot* be erroneous. And now observe that if it says this, it stands committed to the whole Roman Catholic discipline as well as to its theory. Having a creed that is beyond the possibility of doubt, and being commissioned to disseminate that creed, the state is in duty bound to employ the most efficient means of doing this — is bound to put down all adverse teachers, as usurping its function and hindering the reception of its unquestionable doctrine — is bound to use as much force as may be needful for doing this — is bound, therefore, to imprison, to fine, and if necessary, to inflict severer penalties, so that error may be exterminated and truth be triumphant. There is no half-way. Being charged to put men in the way to heaven, it cannot without sin permit some to be led the other way. If, rather than punish a few on earth, it allows many to be eternally damned for misbelief, it is manifestly culpable. Evidently it must do all, or it must do nothing. If it does not claim infallibility, it cannot in reason set up a national religion; and if, by setting up a national religion, it does claim infallibility, it ought to coerce all men into the belief of that religion. Thus, as was said, every state church is essentially popish." Necessary deduction. If the principle is right, it must be pursued to its ultimatum.

[1] Gibbon makes the following important observation:

"It is incumbent on the authors of persecution previously to reflect whether they are determined to support it in the last extreme. They excite the flame which they strive to extinguish; and it soon becomes necessary to chastise the contumacy, as well as the crime, of the offender. The fine which he is unable or unwilling to discharge, exposes his person to the severities of the law; and his contempt of lighter penalties suggests the use and propriety of *capital punishment*." "Decline and Fall of the Roman Empire," chapter 37, paragraph 23. Danger in inaugurating persecution.

Logical demands of the system.

urday to be the Sabbath, or disbelieves the whole, would not the same system require that we should resort to imprisonment, banishment, the rack, and the fagot, to force men to violate their own consciences, or compel them to listen to doctrines which they abhor? When the State governments shall have yielded to these measures, it will be time enough for Congress to declare that the rattling of the mail coaches shall no longer break the silence of this despotism.

Government's duty is to protect *all* on *every day*.

It is the duty of this government to afford *all*—to Jew or Gentile, pagan or Christian, the protection and the advantages of our benignant institutions on *Sunday* as well as every day of the week. Although this government will not convert itself into an ecclesiastical tribunal, it will practice upon the maxim laid down by the founder of Christianity—that it is lawful to do *good* on the Sabbath day.

Christian means, not law, should be resorted to.

If the Almighty has set apart the first day of the week as a time which man is bound to keep holy, and devote exclusively to his worship, would it not be more congenial to the precepts of Christians to appeal exclusively to the great Lawgiver of the universe to aid them in making men better—in correcting their practices, by purifying their hearts?

Government will afford them protection.

Government will protect them in their efforts. When they shall have so instructed the public mind, and awakened the consciences of individuals as to make them believe that it is a violation of God's law to carry the mail, open post-offices, or receive letters on

How to remedy the evil.

Sunday, the evil of which they complain will cease of itself, without any exertion of the strong arm of civil power. When man undertakes to become God's avenger, he becomes a demon.[1] Driven by the frenzy

Sacrifice of independent minds.

[1] "Now among the victims of religious persecution must necessarily be found an unusual proportion of men and women more independent than the average in their thinking, and more bold than the average in utter-

of a religious zeal, he loses every gentle feeling, forgets the most sacred precepts of his creed, and becomes ferocious and unrelenting.[1]

The zealot forgets the precepts of Christianity.

Our fathers did not wait to be oppressed when the mother country asserted and exercised an unconstitutional power over them. To have acquiesced in the tax of three pence upon a pound of tea, would have led the way to the most cruel exactions; they took a bold stand against the principle, and liberty and independence was the result. The petitioners have not requested Congress to suppress Sunday

The unjust oppression of the colonists.

ing their thoughts. The Inquisition was a diabolical winnowing machine for removing from society the most flexible minds and the stoutest hearts; and among every people in which it was established for a length of time, it wrought serious damage to the national character. It ruined the fair promise of Spain, and inflicted incalculable detriment upon the fortunes of France. No nation could afford to deprive itself of such a valuable element in its political life as was furnished in the thirteenth century by the intelligent and sturdy Cathari of southern Gaul." John Fiske, in "The Beginnings of New England," pages 41, 42.

Detriment of persecution to national character.

[1] The truth of this statement has been proved in our own history. Neither Cotton nor Winthrop, says John Fiske, "had the temperament which persecutes. Both were men of genial disposition, sound common sense, and exquisite tact." Yet these were the men who executed the death penalty on "dissenters" and "infidels;" and Roger Williams, in the dead of winter, was compelled to take refuge with the savages of the forests. "On the statute books," says Fiske, "there were not less than fifteen capital crimes, including such offenses as idolatry, witchcraft, blasphemy, marriage within the Levitical degrees, 'presumptuous Sabbath-breaking,' and cursing or smiting one's parents." "Colonial Laws of Massachusetts," pages 14–16.

Men of genial disposition will persecute even to death.

Capital crimes.

Hutchinson, the historian, declares: "In the first draught of the laws by Mr. Cotton, which I have seen corrected with Mr. Winthrop's hand, diverse other offenses were made capital; viz., profaning the Lord's day in a careless or scornful neglect or contempt thereof. (Numbers 15:30–36.)" "History of Massachusetts," volume i, page 390.

Sabbath-breaking a capital crime.

The following, which was legal authority, is an extract from the "answers of the reverend elders to certain questions propounded to them," November 13, 1644: "So any sin committed with an high hand, as the gathering of sticks on the Sabbath day, may be punished with death, when a lesser punishment might serve for gathering sticks privily, and in some need." "Records of Massachusetts Bay," volume ii, page 93; Winthrop, ii, 204 *et seq.*

Religious, not civil, reasons the cause of complaint.

mails upon the ground of political expediency, but because they violate the sanctity of the first day of the week.

This being the fact, the petitioners having indignantly disclaimed even the wish to unite politics and religion, may not the committee reasonably cherish the hope that they will feel reconciled to its decision in the case; especially as it is also a fact that the counter-memorials, equally respectable, oppose the interference of Congress upon the ground that it would be legislating upon a religious subject, and therefore unconstitutional?

Counter-memorials oppose interference of Congress on a religious question.

Sunday legislation unconstitutional.

Resolution.

Resolved, That the committee be discharged from the further consideration of the subject.[1]

[1] Mr. Ben: Perley Poore, an old official of the United States Senate, in his "Reminiscences" (page 101), records the following in connection with the foregoing report:

Reminiscence of 1829–1830.

"When Admiral Reeside was carrying the mails between New York and Washington, there arose a formidable organization in opposition to the Sunday mail service. The members of several religious denominations were prominent in their demonstrations, and in Philadelphia

Public streets obstructed.

chains, secured by padlocks, were stretched across the streets on Sundays to prevent the passage of the mail coaches. The subject was taken up by politicians, and finally came before the House of Representatives, where it was referred to the Committee on Post-roads, of which Richard M. Johnson of Kentucky, was then the chairman. The Rev. Obadiah B. Brown, who had meanwhile been promoted in the Post-office Department, wrote a report on the subject for Colonel Johnson, which gave the 'killer of Tecumseh' an extended reputation, and was the first step toward his election as Vice-President, a few years later."

Popularity of reports.

The general favor with which these reports were received, their commendation by the newspapers, and the expressions of approval by public assemblies, show in what light religious legislation was regarded three quarters of a century ago. Nor was it, as the advocates of Sunday laws would have us believe, on account of opposition to Christianity, but

Spirit of the times.

exactly the opposite; for some of the most strenuous advocates of our secular system of government were Christian ministers. The power of legislating upon religion, as Bancroft says, was withheld, "*not from indifference*, but that the infinite spirit of eternal truth might move in its freedom and purity and power." "History of the Formation of the Constitution," book v, chapter 1.

TRIBUTE TO COL. RICHARD M. JOHNSON.

AUTHOR OF THE SUNDAY MAIL REPORTS ADOPTED BY CONGRESS IN 1829 AND 1830.

BY MR. ELY MOORE.[1]

Heroic soldier and profound statesman.

Colonel Johnson not only proved himself a heroic soldier, but a profound and honest statesman. He has not only won the blood-stained laurel, but the civic wreath. He not only merits our esteem and admiration for breasting the battle storm — for risking his life in the deadly breach; but, also, for the firm, patriotic, and undeviating course that has marked his political life; and especially is he entitled to our love and gratitude, and to the love and gratitude of all good men,— of all who love their country,— for his able, patriotic, and luminous report on the Sunday mail question. . . . I will hazard the declaration that Colonel Johnson has done more for liberal principles, for freedom of opinion, and for pure and unadulterated democracy, than any [other] man in our country — by arresting the schemes of an ambitious, irreligious priesthood. Charge him not with hostility to the principles of religion, because he opposed the wishes and thwarted the designs of the clergy — rather say that he has proved himself the friend of pure religion, by guarding it against a contaminating alliance with politics. His strong and discriminating mind detected and weighed the consequences that would result from such a measure. He sifted the projectors of this insidious and dangerous scheme, and resolved to meet them full in the face, and by means of reason and argument to convince the honest and silence the designing. The honest he did convince — the designing he did defeat, though, strange to tell, did not silence: their obstinacy can only be equaled by their depravity. Their perseverance, however, can accomplish nothing, so long as the people prize their liberties, and can have access to the Constitution and Johnson's Reports.

Sunday Mail Reports.

A friend of pure religion.

That man who can contemplate the misery and degradation that have ever resulted to the many from a union of the ecclesiastical and secular powers, must be a stranger to every patriotic feeling, callous to every noble impulse, and dumb to all the emotions of gratitude, not to admire and revere, honor and support, the man who had the honesty and moral heroism to risk his popularity by stemming the current of public prejudice; by exciting the bigot's wrath, and provoking the vigilant and eternal hostility of a powerful sect, whose influence is felt, and whose toils are spread, from Maine to California,

Had courage to face public prejudice.

[1] From speech at Masonic Hall, New York, March 13, 1833, recommending Mr. Johnson as a candidate for the Vice-Presidency, published in "Authentic Biography of Col. Richard M. Johnson," by William Emmons (Henry Mason, New York, 1833), pages 64-68.

and from Oregon to the Atlantic. But the same determined spirit, the same sacred love of country, that prompted Colonel Johnson to face the country's open foe on the battle-field, urged him with equal ardor to grapple with its secret enemies in the Senate chamber.

Influence of Sunday Mail Reports.

He who considers the influence which those reports are calculated to exert over the destinies of this republic as trifling or of small importance, is but little acquainted with the history of the past, and consequently but ill qualified to judge of the future.

Colonel Johnson had been instructed by the philosopher and faithful historian, as well as by the teachings of his own mighty mind, that "human nature is never so debased as when superstitious ignorance is armed with power."

Knew results of union of church and state.

He knew full well that whenever the ecclesiastical and secular powers were leagued together, the fountains of justice were polluted — that the streams of righteousness were choked up, and that the eternal principles of truth and equity were banished the land — that the people were degraded — their understandings enthralled, and all their energies crushed and exhausted. He knew full well that all the evils combined, which convulse the natural world, were not so fatal to the prosperity of a nation as religious intolerance; for even after pestilence has slain its thousands,— the earthquake swallowed up its victims, and the desolating whirlwind swept the land,— yet may a new and better world spring from the desolation; but when religion grasps the sword, and superstition rears her haggard form, hope has fallen forever. Do you call for the evidence? The histories of Spain, of Italy, and of Portugal are before you. They tell you these states were powerful once. What are they now? "Infants in the cradle, after years of nonentity."

A student of history.

Colonel Johnson had not only a regard for the political, but also for the religious, welfare of his country, when he drafted these reports. He had been instructed, by the history of the past, that in proportion as a sect becomes powerful, from whatever cause, it retrogrades in piety, and advances in corruption and ambition. He was aware that the Christian religion no longer partook of the character of its Founder, after the civil arm was wielded in its behalf. After it was taken into keeping by Constantine, that royal cut-throat — that anointed parricide — that baptized murderer — from that time to the present, with but few intervals, it has been wielded as a political engine, prostrating the liberties and paralyzing the energies of the nations.

We hazard but little in predicting that the Reports of the Kentucky statesman, calculated as they are to guard us from a like curse, will survive the flourish — will be read and admired — honored and revered by the freemen of America, when the edicts of kings and emperors, and the creeds of councils, shall have been swept from the memory of man.

21ST CONGRESS] [1ST SESSION

MEMORIAL

Feb. 15, 1830.

OF THE GENERAL ASSEMBLY OF INDIANA.[1]

EXECUTIVE DEPARTMENT, INDIANA,
INDIANAPOLIS, February 15, 1830.

. . . . . .

Memorial.

The memorial of the General Assembly of the State of Indiana, respectfully represents:

Sectarian influence in Congress unconstitutional.

That we view all attempts to introduce sectarian influence into the councils of the nation as a violation of both the letter and the spirit of the Constitution of the United States and of this State, and at the same time dangerous to our civil and religious liberties, inasmuch as those charters secure to every man the free exercise of his religion and the right to worship the Almighty God according to the dictates of his own conscience, and inasmuch as any legislative interference in matters of religion would be an infraction of those rights;

Also dangerous to our liberties.

Any legislative interference in religion an infraction of rights.

Remonstrance against combination of sects to enforce religious duties.

We, therefore, most respectfully remonstrate against any attempt, by a combination of one or more sects, to alter the laws providing for the transportation of the mail, and against the passage of a law to regulate or enforce the observance of religious duties, or which may interfere with what belongs to the conscience of each individual;[2]

[1] "American State Papers," Class VII, page 240.

[2] "There ought to be room in this world," says Samuel T. Spear, in "Religion and the State," "for *all* the consciences in it, without any encroachment upon the rights of each other; and there would be if *all* men, in their relations to each other, would be content to exercise their *own* rights of conscience in a reasonable manner. This would leave every man to determine the religious question for himself, and, as the necessary consequence, relieve every man from all impositions, burdens, taxes, or disabilities arising from the determination of the question by others. Though the rule is a simple one, it is, nevertheless, one of the most difficult things for bigotry to learn. The only way to learn it effectually is not to be a bigot."

Rights do not conflict.

All religious legislation contrary to Christianity. No observance of Christianity needs the state's aid.

That all legislative interference in matters of religion is contrary to the genius of Christianity; and that there are no doctrines or observances inculcated by the Christian religion which require the arm of civil power either to enforce or sustain them;

Every connection between church and state dangerous to civil and religious liberty.

That we consider every connection between church and state at all times dangerous to civil and religious liberty;[1] and further,

A cordial approval of Mr. Johnson's Senate report.

That we cordially agree to and approve of the able report of the Hon. R. M. Johnson, adopted by the Senate of the United States at its last session, upon the petitions for prohibiting the transportation of the mail on Sunday; and while we protest in the most solemn manner against every attempt to enforce, by legislative interference, the observance of any particular day, yet believe that both the spiritual and temporal interest of mankind is promoted by setting apart one day in the week for the purpose of rest, religious instruction, and the worship of God.

A solemn protest against the enforced observance of any day. Yet voluntary observance beneficial.

Resolution.

Resolved, That his Excellency the Governor be requested to transmit a copy of the foregoing memorial to each of our Senators and Representatives in Congress, and to the President of the Senate and Speaker of the House of Representatives.

[1] Jefferson, February 4, 1809, replying to an address of the society of the Methodist Episcopal Church, at New London, Connecticut, said:

Value of first amendment.

"No provision in our Constitution ought to be dearer to man than that which protects the rights of conscience against the enterprises of the civil authority. It has not left the religion of its citizens under the power of its public functionaries, were it possible that any of these should consider a conquest over the consciences of men either attainable or applicable to any desirable purpose."

Jefferson's popularity.

Although Jefferson was not a church member, no president ever received more commendations in public addresses from religious denominations than did he. His jealousy for the rights of every denomination, and for the rights of every individual of every denomination, made him extremely popular among all lovers of religious liberty; and many were the addresses which he received, especially from the Baptists and Methodists, approbative of his course in carrying out American principles.

21ST CONGRESS] [2D SESSION

JOINT RESOLUTION

Dec. 31, 1830

OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF ALABAMA IN GENERAL ASSEMBLY CONVENED.

COMMUNICATED TO THE SENATE, JANUARY 22, 1831.

Whereas, Much excitement exists, and deep interest is felt in many parts of the United States, in consequence of the powerful exertions which have been made, and are still making, to prevent the transportation of the mail on Sunday; and whereas, also, the rights and opinions of every religious sect, whether they observe the Christian Sabbath or not, are equally entitled to the respect and protection of the government; and whereas, also, it is thought proper and expedient that the Legislature of this State should express their opinion on this important and interesting subject, as it is confidently anticipated this measure will again be brought by its friends before the present Congress of the United States; therefore,

Equality of religious sects.

Be it resolved by the Senate and House of Representatives of the State of Alabama in General Assembly convened, That the transportation of the mail on Sunday is of vital importance to the welfare and prosperity of the Union; and that its suspension on that day would be a violation of the spirit of the Constitution, and be repugnant to the principles of a free government.

Sunday legislation repugnant to principles of free government.

Be it further resolved, That the sentiment expressed in the report of the committee at the last session of Congress, in opposition to the suspension of the mail on Sunday, is entitled to the highest consideration of the friends of the Constitution, and every lover of civil and political freedom.

Sunday law opposed.

And be it further resolved, That our Senators in Congress be instructed, and our Representatives requested to use their exertions in opposition to any measure that may tend to retard the transportation of the mail.

JAMES PENN,
Speaker of the House of Representatives.
SAMUEL B. MOORE,
President of the Senate.
GABRIEL MOORE.

Approved: December 31, 1830.

Influence of Christianity on secularism.

[1] Although for the sake of prejudicing Christian people, many religio-political agitators stigmatize our secular form of government as "atheistical" and the secularist as a "political atheist," yet it nevertheless remains a fact that the words of Christ, "Render therefore unto Cæsar the things which are Cæsar's, and unto God the things that are God's," probably had more influence in the adoption of our secular theory of government than any other one thing. Those words were made the texts of sermons by ministers in all parts of the land; they were used by statesmen, conventions, and legislatures; they were repeated in political disquisitions, until Christian people everywhere thoroughly understood that the Christian theory and the secular theory of government were one and the same theory. Ex-president Madison had occasion to recall this fact in an address in which he says:

"It is a pleasing and persuasive example of pious zeal, united with pure benevolence, and of cordial attachment to a particular creed, untinctured with sectarian illiberality. It illustrates the excellence of a system [our secular polity] which, by a due distinction, *to which the genius and courage of Luther led the way, between what is due to Cæsar and what is due to God*, best promotes the discharge of both obligations.

Influence of Reformation on secularism.

"The experience of the United States is a happy disproof of the error so long rooted in the unenlightened minds of well-meaning Christians, as well as in the corrupt hearts of corrupt usurpers, that without a legal incorporation of religious and civil polity, neither could be supported. A mutual independence is found most friendly to practical religion, to social harmony, and to political prosperity."

Benefits of a Christian civilization.

With this positive assertion on the part of Madison that our secular government is the direct outgrowth of that great religious movement — the Reformation — and his reference to the words of Christ, we may well take pride in the fact that liberalism and secularism are among the great institutions produced by a Christian civilization.

21ST CONGRESS] [2D SESSION

MEMORIAL

Jan. 21, 1831.

OF THE GENERAL ASSEMBLY OF ILLINOIS.

COMMUNICATED TO THE SENATE, FEBRUARY 14, 1831.

Variety of sentiment existing.

Whereas, A variety of sentiment exists among the good people of the United States on the subject of the expediency or inexpediency of stopping the transportation of the mail on the Sabbath day; and inasmuch as Congress has been and is still urged to pass an act restricting the carrying of the mails to six days in the week only, by petitions and memorials from various quarters of the Union; and inasmuch as it is believed that such an innovation upon our republican institutions would establish a precedent of dangerous tendency to our privileges as freemen, by involving a legislative decision in a religious controversy on a point in which good citizens may honestly differ: and whereas, a free expression of sentiment by the present General Asssembly on the subject may tend, in a great degree, to avert so alarming an evil as the union of church and state; therefore,

Proposed innovation a dangerous precedent.

Resolution of Illinois.

Resolved by the people of the State of Illinois, represented in the General Assembly, That the able report made by Colonel Richard M. Johnson of Kentucky, in the Senate of the United States, on the 19th January, 1829, adverse to the stoppage of the transportation of mails on the Sabbath or first day of the week, meets our decided approbation.

Colonel Johnson's resolutions approved.

Resolved, That the Governor be requested to transmit copies of the foregoing preamble and resolution to our Senators and Representatives in Congress, with the request that they use their exertions to prevent the passage of any bill which may, at any time, be introduced for such purpose.

Sentiment of the Assembly.

Certificate.

We certify the foregoing to be a true copy of a resolution adopted by the General Assembly of the State of Illinois at their present session.

JESSE B. THOMAS, JUN.,
Secretary of the Senate.

DAVID PRICKETT,
Clerk to the House of Representatives.

Donatist arguments.

The arguments of the Donatists are of interest in this connection, and are in striking contrast with those of many professed Christians of to-day:

Apostles did not persecute.

"Did the apostles ever persecute any one?" they inquired, "or did Christ ever deliver any one over to the secular power? Christ commands us to flee persecutors. Matthew x, 23. Thou who callest thyself a disciple of Christ oughtest not to imitate the evil deeds of the heathen. Think you thus to serve God — by destroying with your own hand? Ye err, ye err, poor mortals, if ye believe this; for God has not executioners for his priests. Christ persecutes no one; for he was for inviting, not forcing, men to the faith; and when the apostles complained to him of the founders of separate parties (Luke ix, 50), he said to them, 'He who is not against us, is for us;' and so, too, Paul, in Philippians i, 18. Our Lord Christ says, 'No man can come unto me, unless the Father, who hath sent me, draw him.' But why do you not permit every man to follow his own free will, since God, the Lord himself, has bestowed this free will on man? He has simply pointed out to man the way to righteousness, that none might be lost through ignorance. Christ, in dying for men, has given Christians the example to die but not to kill. Christ teaches us to suffer wrong, not to requite it. The apostle tells of what he had endured, not of what he had done to others." — *Bishop Petilian.*

Why not leave men free?

Interference of man with God's plans.

"God created man free, after his own image. How am I to be deprived of that by human lordship, which God has bestowed on me? What sacrilege, that human arrogance should take away what God has bestowed, and idly boast of doing this in God's behalf. It is a great offense against God when he is defrauded by men. What must *he think* of God, who would defend him with outward force? Is it that God is unable to punish offenses against himself? Hear what the Lord says: 'Peace I leave with you, my peace I give unto you; not as the world giveth, give I unto you.' The peace of the world must be introduced among contending nations by arms. The peace of Christ invites the willing with wholesome mildness; it never forces men against their wills. The Almighty God employed prophets to convert the people of Israel; he enjoined it not on princes; the Saviour of souls, the Lord Christ, sent fishermen, and not soldiers, to preach his faith." — *Bishop Gaudentius.*

Christianity does not force men.

21ST CONGRESS] [1ST SESSION

SUNDAY LEGISLATION

Jan. 8, 1830.

AN ANTI-REPUBLICAN UNION OF CHURCH AND STATE.

To the Honorable, the Senate and House of Representatives of the United States of America in Congress assembled: [1]

New Jersey remonstrance.

The undersigned, memorialists of the town of Newark, county of Essex, and State of New Jersey, being apprized of the numerous petitions presented to your honorable body, praying a repeal of the present laws for the transportation of the mails and the opening of the post-offices on the first day of the week, beg leave (in accordance with their sense of duty) humbly to memorialize your honorable body, and pray that no such repeal be made, nor any law be enacted interfering with the Post-office Department, so as to prevent the free passage of the mail on *all* days of the week, or to exclude any individual from the right to receive his papers on the first, as well as on the seventh day.

Repeated efforts of bigotry.

Notwithstanding your memorialists have the fullest confidence in the wisdom and integrity of our national Legislature, they are induced to memorialize your honorable body at this time, from a fear lest the reiterated efforts of bigotry and fanaticism should finally prevail on your honorable body to legislate upon a subject which your memorialists consider is, by the Constitution of these States and the laws of nature, left free; and which, for the welfare of

1 "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, pages 238, 239. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

Surprise invoked.

mankind, should be maintained so. Nor can they at this time refrain from expressing their astonishment at, and their disapprobation of, the reiterated and untiring efforts of a part of the community, who, through misguided zeal or ecclesiastical ambition, essay to coerce your honorable body into a direct violation of the principles of the Constitution, by the enactment of laws, *the object of which would be to sustain their peculiar tenets or religious creeds* to the exclusion of others; thereby uniting ecclesiastical and civil law, and leading ultimately to the abhorrent and anti-republican union of church and state.

Violation of the Constitution.

Perseverance shown.

Your memorialists would not presume to remonstrate, were it not that their opponents (after a most signal defeat in last Congress) have renewed their petitons with a vigor increased by disappointment, and a spirit as perseveringly determined as their premises are illiberal and unwarrantable.

Love for religion.

Your memorialists approve of morality, reverence religion, and grant to all men equal rights, and are governed by the principles of our Constitution and the laws of our land; but we deprecate intolerance, abhor despotism, and are totally opposed to all attempts of the religions of any sect to control our consciences.[1]

Deprecation of intolerance.

Liberty of Sunday-observers not abridged.

Nor can your memorialists perceive wherein their opponents are deprived of their liberty of conscience by the uninterrupted course of the mails, for if it be right for them to travel on the first day of the week, it cannot be wrong for the mails; if it be consistent

Ground of remonstrance.

[1] It will be seen from this that the reasons for the opposition of these petitioners to Sunday legislation were not on account of any opposition to the Christian religion, but like Madison's memorial in Virginia in 1785, these memorials were prompted by reverence for, and interest in, that religion. There is no doubt whatever that the religious denominations are in a much better condition morally in the United States, unaided by government, than they would have been had they all these years received assistance from the civil power.

for them to do *their* business on the first day of the week, it cannot be inconsistent for the mails to be made up and opened, and papers delivered, on the same day; if the traveling *they* do, and the labors they perform, are matters of necessity, and therefore admissible, your memorialists humbly suggest whether the interests of a *vast majority of the citizens of the United States*, conveyed by mails, are not matters of as great necessity?

Inconsistencies involved.

Majority concerned.

Your memorialists, in accordance with these views beg leave to protest against any interference with the transportation of the mails, or the distribution of letters at the post-offices, on the first day of the week.[1] And your memorialists, as in duty bound, will ever pray, etc.

[1] "There are two or more classes of citizens who do not believe that the first day of the week, called Sunday, is the Sabbath, since the Lord designated the seventh day as a day for rest and worship. Another class do not believe in any day of worship commanded by God, and still another class care not at all about religious designations.

Diversity of belief.

"The state has no authority to make religious laws, and all Sunday laws must necessarily be religious laws. The law can no more make men religious than it can make them unselfish or wise. Laws can restrain, but legal righteousness has ever been temporary. . . .

Limitations of State duty.

"As before said by the 'Graphic,' the church must be in a deplorable condition when it is compelled to depend upon civil law and the police commissioners for support. Religion must live by persuasion, and not rest on force. Even those who believe that God consecrated the seventh day and set it apart as a day of rest and worship do not believe that he intended to restrict the personal liberty of his people or deprive them of any pleasures. The decalogue contains no such restrictions. The life of Christ shows no such arbitrary disposition. . . .

State help indicates church weakness.

"The Oakland, California, 'Daily Times' says: 'The Sunday law is simply indefensible. It is entirely without the province of the state. The mystic and supernatural have no part in the affairs of government. The spirit that incites such legislation is a belated survival of mediæval intolerance and superstition. The Sunday law is an anachronism. It has no place this side of the Renaissance.' This being true, what else may we expect but open revolt against an obnoxious, unconstitutional law." "Colorado Graphic."

Sunday laws indefensible.

Jan. 20, 1830.

A PROTEST FROM SABBATARIANS.[1]

To the Honorable, the Senate and House of Representatives in Congress assembled:[2]

The subscribers, inhabitants of the county of Salem, in the State of New Jersey, respectfully represent:

Union of sentiment.

That your memorialists belong to various religious denominations of Christians, and some of them are conscientious in the belief that the *seventh* day of the week, commonly called *Saturday*, is the *true Sabbath;* that they have learned with regret that attempts are simultaneously making in different sections of the country to get up petitions and memori-

Importance of small sects.

[1] In the Sunday-mail agitation eighty years ago the Seventh-day Christains were not asleep any more than they are now. Among the memorials sent up then and preserved among the public documents of the government is one signed partially by them. Thus we see that these Seventh-day people, though small in numbers, have always made themselves felt when religious liberty was endangered. The truth is that in all the world's history, it has been the small and unpopular denominations — the dissenters and "heretics" — that have done most for religious liberty. For this reason, if for no other, these small sects should be encouraged by affording them equal protection and privileges with the dominant sect, that we may ever have a people jealous of the least infringement upon our liberties, and fully alive to the danger when the first attempt is made to encroach upon our natural and constitutional rights. Well these memorialists knew, as people always ought to know, that human nature is ever the same; and if the ecclesiastics to-day had been in the places of the ecclesiastics a few centuries ago, the sufferers would not have fared much better. If liberty is wanted, never place a tyrant in control and then trust to his liberality; never create a despotism and then rely upon the benevolence of the despot for freedom. A self-governing democracy is the people's only safeguard.

Value of past experience.

[2] "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, pages 240, 241. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

als to Congress to pass a law for stopping the United States mail on Sunday. While your memorialists acknowledge, with the most devout reverence, that "the earth is the Lord's and the fulness thereof," and do most solemnly disclaim all idea of "robbing Jehovah of the worship which is his due," as Christians and republicans they are constrained to remonstrate against the passage of such a law, which they believe would be pregnant with serious evils to our country.

Efforts of Sundayists.

We are of the opinion that the report of the committee of the United States Senate of the last year, on this subject, is conclusive, and that the first article of amendments to the Constitution, which declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press," has virtually prohibited Congress from legislating upon this subject.

Conclusiveness of Senate report.

In the opinion of your memorialists, errors of opinion, whether of religion or of politics, may be safely tolerated in our country, and no *surveillance* is required to control them other than that of reason, "a free press," and the "free course of the gospel." From the judicious arrangement of the Post-office Department, there is no reason to dread any disturbance of religious societies in their devout worship on that day; and the passage of such a law would, in the opinion of your memorialists, by occasioning *numerous expresses* and other modes of conveyance, defeat the *ostensible* object of the law itself. Such a measure would be the result of a "zeal not according to knowledge," and is not warranted by the benevolent spirit of our holy religion, which is "gentle," and not coercive; which is "without partiality and without hypocrisy;" which inculcates an active benevolence; which discovers to us a Deity who delights not in "sacrifices and vain oblations," but in the offer-

Errors of opinion in a free country not dangerous.

Christianity not coercive.

ing of an humble and contrite heart, and whose goodness is over all his works.

Evils of stopping Sunday mails.

The proposed measure would tend to circumscribe and restrict the benefits of a free press, which is the palladium of our liberties, and to check or to retard the diffusion of knowledge, which, in the order of Providence, is the surest means of spreading the gospel, and would obscure or render less refulgent "the light of Bethlehem's star." Works of mercy and of private and public necessity are always excluded from the general prohibition. The divine Author of our religion has shown us by his own example that it is lawful to do good on the Sabbath day. The proposed measure would lessen the good man's opportunities of doing good. Many religious tracts, pamphlets, and newspapers "devoted to the interest of Zion and the prosperity of the Redeemer's kingdom," are transmitted by mail; and why not "mail carriers," equally with "illiterate fishermen," become the heralds of salvation? Why attempt to restrict or limit the Almighty in the methods of his grace? To stop the mail would, in the opinion of the memorialists, be repugnant to a wise maxim, which applies to morals and religion, as well as to economics, "not to put off till to-morrow that which can be done to-day," and would resemble the conduct of the "slothful servant who hid his talent in a napkin."

Christ's example.

Constitution guarantees freedom to all.

It is an invaluable privilege, for which, as Christians and Republicans, we cannot be too thankful, that the Constitution of the United States guarantees to every one the rights of conscience and religion; and, in the opinion of your memorialists, the proposed measure would operate as a violation of these rights; *would be made a precedent for others of the same kind, and more alarming;* would pave the way to a union of church and state, against which our

Precedent for further evil.

horrors are excited by the awful admonitions of history; which would be the deathblow to our *civil* and *religious liberties*, purchased by the virtue and valor, and sealed with the blood, of our fathers; and end in the worst of all tyranny "an ecclesiastical hierarchy."[1]

Evils resulting from a wrong step.

January 20, 1830.

[1] It is a fatal mistake to suppose that because some of the leaders in the Sunday movement are among our best men that there will be too much regard for the demands of justice and the requirements of a benevolent gospel, to use the Sunday laws to wrong an American citizen. The profession of Christianity has a thousand times been proved not to be a sufficient warrant to prevent injustice — and injustice of the most flagrant character. Such arguments as these were valueless to our early statesmen; are they of more value now? Madison very properly characterized the fallacious claim over a century ago, and what he said is worthy of repetition. He takes up the subject in answer to the question, "What is to restrain the majority, when united with a common passion, from unjust violations of the rights and interests of the minority or of individuals? Will their religion?" In his comments he says:

"It [religion] is not pretended to be such [a restraint as will insure the recognition of rights] on men individually considered. Will its effect be greater on them considered in an aggregate view? — Quite the reverse. The conduct of every popular assembly acting on oath, the strongest of religious ties, proves that individuals join without remorse in acts against which their consciences would revolt if proposed to them under the same sancion, separately, in their closets. *When, indeed, religion is enkindled into enthusiasm, its force, like that of other passions, is increased by the sympathy of a multitude.* But enthusiasm is only a temporary state of religion, and, while it lasts, will hardly be seen with pleasure at the helm of government. Besides, as religion in its coolest state is not infallible, *it may become a motive to oppression, as well as a restraint from injustice.*" "Notes on the Confederacy" (1787).

The surest way of having our rights made secure, is *to remove all means by which they can be invaded.* If this cannot be done, the next best thing is to come as near as possible to so doing. Hence the surest way of preventing persecution on account of working on Sunday, is to have no Sunday laws with which to persecute. Instead of allowing the Sunday laws of the various States to remain upon the statute books as a dead letter, which may at any time be revived by some religious bigots (as has repeatedly been done lately), the only way to do in order that the security of the Sabbatarian may be assured, is to repeal totally and forever every Sunday law in the Union. In this way alone will the rights of the Sabbatarian be protected.

21ST CONGRESS] [1ST SESSION

1830.

SUNDAY LAWS INJURIOUS TO TRUE RELIGION.

To the Honorable, the Senate and House of Representatives of the United States in Congress assembled: [1]

Preamble.

The subscribers, citizens of the United States, and inhabitants of Portsmouth, in the county of Rockingham, and State of New Hampshire, having been informed that petitions have been, and are about to be presented to Congress by many of our fellow-citizens, in various sections of the country, praying that the transportation of the mail upon the first day of the week may be discontinued, we beg leave respectfully to remonstrate against granting the prayer of said petitioners, for the following, among other reasons:

We believe that the measure proposed by said petitioners, if carried into effect, would operate unfavorably upon the interests of the Post-office Department, and would occasion much inconvenience to our citizens generally; that it would wholly fail of effecting its avowed object, and would, in the end, *injure rather than promote the cause of true religion;* that, however pure and patriotic may have been the motives in which it originated, the measure has found its support among a majority of its friends more in their zeal than in their knowledge: yet we cannot but regard the steps they are taking as movements hostile to the liberties of the people, and we are per-

Would be injurious to religion.

[1] "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, page 238. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

suaded that the *original movers* of the measure designed it as a stepping-stone to more sensible inroads upon our religious privileges. By establishing the principle it involves, *they hope to silence remonstrance against their future enterprises*, and contend successfully *with weapons furnished them by Congress.*

These acts stepping-stones to further encroachments.

The supporters of the measure are sufficiently protected in their worship, and in the enjoyment of their religious privileges, by the laws of their respective States, and this is all they have a right to demand; while others are not permitted to disturb them, they should not, as we humbly conceive, be permitted to disturb others; they have not, to our knowledge, been appointed by the Almighty the defenders of his honor or the avengers of his injuries. The experience of all ages fully testifies the deplorable consequences of arming religion with the power of the laws. Church and state were never united, but the articles of their union were subsequently sealed with blood.

Sundayists protected in their worship.

Evil of arming religion with law.

In an enlightened community, blessed with free and liberal institutions, *religious despotism can only be established insensibly, and by degrees. Every approach to it should be vigilantly guarded against by the government.* Knowing that in all ages, down to the present time, the clergy have been enterprising and ambitious, seizing eagerly upon power, and exercising it without reason and without mercy, it would be arrogance in those of the present age to claim an exemption from similar propensities; and even were they to claim it, their claim would not be credited by careful observers of their conduct.

Despotism can only be established gradually.

When we consider the number, talents, and influence of this body of men, their zeal and activity, the intimate union that exists among them,

Character of the movement.

Character of their work.

and the concert with which all their movements are accomplished; the astonishing credulity of many of their adherents; the support they derive from numerous religious corporations and societies, rapidly increasing in numbers and in wealth; the almost unlimited control which they exercise over our colleges and other literary institutions, with no power but the laws, which they are ambitious to control, to watch or check them, we see reason to dread even their unassisted efforts to deprive us of our liberties; but especially should we deprecate arming them with powers which properly belong only to the people and the rulers of their choice — powers, like in other days, to tread on the necks of kings, dictate laws to nations, and murder millions with impunity.

Inspired by the clergy.

We cannot shut our eyes to the visible fact that the clergy are the prime movers, the life and soul of the measure prayed for by the petitioners? [1]

Remonstrance subserves the cause of liberty.

With these views and feelings, we deem it our sacred duty respectfully but solemnly to remonstrate against the measure prayed for by said petitioners, and we feel conscious that *in so doing we shall best subserve the cause of true religion* and the interests of our beloved country.

Character of the Sunday movement

[1] These reasons, urged so forcibly and successfully against Sunday legislation eighty years ago, are equally applicable to-day. What was the "life and soul" of that movement, is the "life and soul" of the present movement; and now, as then, the move is simply a stepping-stone to further legislation in the same line. The Sunday agitators in 1830 became so excited that chains were stretched across the street in Philadelphia and padlocked, to stop the Sunday mails, and in the Sunday-closing campaign of 1893, repeated demands and petitions were made to the President and others for the troops of the United States to go to Chicago and close the Columbian Exposition on Sunday. Fanaticism became so marked that the newspapers made almost daily reports of ministers' sermons in which boycotting, bombshells, and bullets were threatened in case the gates of the Fair were not closed on the first day of the week. In both cases the clergy were the leaders, and the state-church sentiment prevalent was the direct result of orthodox agitation.

21ST CONGRESS] [1ST SESSION

PRINCIPLES INVOLVED IN SUNDAY LEGISLATION.[1]

1830.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of the subscribers, residing in Philadelphia county, Pennsylvania, respectfully showeth:

That they approach the supreme Legislature of their country, not for the purpose of infringing on the privileges of others, but to secure that liberty which, in their apprehension, is now endangered. When these United States became independent of the British crown, and assumed their just station among the sovereign states of the earth, the delegates appointed to represent the different provinces were not unmindful of the great trust confided to them by the people. To guard against any abuse in matters of religion and civil policy, the wise framers of the Constitution of our government, after defining with unexampled accuracy the rights of the citizens, and limiting the authority of Congress, expressly prohibited the latter from interfering with the religious opinions of the people.

Liberty endangered.

Constitution prohibits interference with religious opinion.

Your memoralists have, therefore, regarded with abhorrence the diligent and untiring efforts of a combination of religious sects, made to obtain an ascendancy in the administration of public affairs. To them, it is obvious that *the ultimate object* proposed to be attained is the *recognition by Congress of certain specific doctrines*, and thereby to enslave the con-

Combination of religious sects.

Ultimate object.

[1] "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, pages 239, 240. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

Unamerican intentions.

sciences of the free citizens of this great republic. It is now contemplated to fill all the public offices with men who shall either directly or indirectly accept the faith and doctrine of a powerful party. The subject of which they now speak, the memorialists are aware, has frequently been the occasion of much painful thought to some of the most eminent statesmen who have adorned our country with the luster of their talents.

Need of remonstrance.

Your memorialists regret the necessity which compels them to intrude on your deliberations at the present juncture. Silence upon their part would be construed into approbation of the measures pursued by those whom they are resolved to oppose; they will, therefore address you in language suited to the emergency, and with a sense of the responsibility thus voluntarily assumed.

Efforts previously made.

At the last session of your body, great efforts were made to induce you to pass a law, the object of which was to suspend the transmission of the mails on what is called the Sabbath. But a patriotic Legislature then decided that it was incompetent for them to approach an undetermined question in religion. It was with great astonishment your memorialists heard that the attempt was again to be renewed, and a new attack to be made on the rights of conscience. They have received with sorrow the information that petitions are daily presented to both houses of Congress in relation to the present mail establishment. *To have proposed an open union of church and state would have been so manifest a violation of republican principle, as must have drawn upon its authors the just resentment of an indignant people. But the subject now adopted as suitable for the legislation of Congress, can be discussed with less danger and* WITH AN EFFECT EQUALLY CERTAIN.

Sinister workings of Sundayists.

No reason for Sunday legislation.

Your memorialists have in vain endeavored to discover any reasonable motive for the selection of the Sabbath as peculiarly proper for legislative support. There is no small diversity of opinion among mankind regarding the propriety of keeping one day in seven holy. The Jews, and some sects of Christians, aver that the *seventh* and not the *first* day of the week, is the true Sabbath. A large number of pious persons believe that the Jewish Sabbath, with its ceremonial observances has been abolished; and that, in its place, the first day of the week must be held equally sacred. Another class of mankind maintain that the institution is utterly abrogated, and that neither day should be observed.

Diversity of opinion.

Congress can decide all religious questions as well as one.

Your memorialists believe that if Congress possess the power to designate what day shall be the Sabbath, and to define its appropriate duties, it would be equally within the scope of their authority to decide other disputed points. If the Constitution has imposed on Congress the duty of discriminating what mode of faith shall be adopted, it must, as a consequence, give the power to compel obedience. Hence all the religious obligations of men must become the subject of legislation to the ruin of families and the destruction of personal comfort and convenience; for if the law can enforce *one* religious duty, it can, by parity of reasoning, insist on the performance of *all*.

Results of acceding to arrogance.

Your memorialists would say that, when the Congress of the United States shall prefer an arrogant and domineering clergy, heaping upon them privileges and immunities not enjoyed by other citizens, then will be formed *as powerful an ecclesiastical establishment as can be found in any other nation on earth*. The doctrines of the favored party will then become the creed of the country, to

Ultimate evils.

be enforced by fines, imprisonment, and perhaps death.[1]

Independent thought will be suppressed if law dictates opinion.

Superstition and bigotry will paralyze the steps of genius, and the further improvement of our now happy country must be suspended. If the sun of her glory shall now set, it will, perhaps, never again rise to cheer a benighted world with the splendor of its rays.

Do not oppose religion.

Your memorialists would further represent that, in their present appeal to the justice and magnanimity of the constituted authorities of their country, they are actuated by no irreverent motive. Nor do they cherish other than feelings of respect for their fellowcitizens who differ from them in sentiment. They do not ask you to throw any impediment in the path of those who, in sincerity of heart, would worship the God of their fathers. Their design in now appearing before you is to preserve the liberty of conscience inviolate; and to ask that the Constitution of the government may not be infringed in this particular.

Fullest liberty desired.

On no consideration would they wish to restrain the right of free discussion in relation to the matter now pending before you. That liberty they ask for themselves, they devoutly desire may be enjoyed by all mankind. They are, however, aware that the Sabbath is a part of the Jewish law, and it is for that people to advocate its sanctity. These are, however, satisfied in the enjoyment of their own rights,

Logic of persecution.

[1] The historian Gibbon utters an important warning upon this point. He says: "It is incumbent on the authors of persecution previously to reflect whether they are determined to support it in the last extreme. They excite the flame which they strive to extinguish; and it soon becomes necessary to chastise the contumacy, as well as the crime of the offender; the fine which he is unable or unwilling to discharge, exposes his person to the severities of the law; and his contempt of lighter penalties suggests the use and propriety of *capital punishment*."—"Decline and Fall of the Roman Empire," chapter 37, paragraph 23.

without intruding on those of others. The declaration has gone forth from a sect of Christians, that the due observance of the Sabbath is essential to the moral health and existence of the nation. They have arrogantly usurped the right to determine in what the Sabbath shall consist, without having the least regard for those who conscientiously differ from them.

Ideas of agitation.

Your memorialists have considered the importance of your deliberations to the welfare of the nation, and that something more than an ordinary occurrence is necessary to justify them in thus obtruding on your attention. Their inclinations would have induced them to keep silence, had they not felt themselves urged by a sense of imperious duty to oppose the daring schemes of the day. The zeal with which the plans of different sectaries have been prosecuted, and the pertinacity of design manifested by their continuing to force their views of religion on the people, must be accepted as an apology. The great political doctrine, that all men have a natural right to worship Almighty God according to the dictates of their consciences, is now denied. It is said that religion requires compulsory laws for its security,[1] and the extension of its influence over the conduct and characters of men. The truth of this position is denied in the most unqualified manner by those who now address you. They are clearly of this opinion, that there is no just cause of complaint on the part

Importance of present remonstrance.

Denial of our political maxims.

[1] This church-state doctrine is quite generally held among Sunday-law advocates. Judge Scott, in delivering the opinion upholding the Sunday law in Missouri, said: "Long before the convention which framed our Constitution was assembled, experience had shown that *the mild voice of Christianity was unable to secure the due observance of Sunday as a day of rest.* The arm of the civil power had interposed." So, what the mild voice of Christianity cannot do, these Sunday agitators are determined to accomplish at any cost by the iron hand of the law.

Impotency of religion, in the eyes of Sundayists.

Intolerant zeal.

of the petitioners, and that their intolerant zeal has evidently destroyed their judgment.

Compulsion in religion illegitimate.

Your memorialists feel no disposition to submit to compulsion in matters which rest exclusively between themselves and the God who made them. Besides the attempt now being made on Congress, numerous other arbitrary measures have been adopted, with the intention of holding up to public odium those who cannot think in conformity with the doctrines avowed by your petitioners. Whatever fanaticism may have anticipated in former days, or zealous bigots in the present may predict, no great danger is to be feared of the stability of our government, except from the combinations of a corrupt clergy. More than half a century has elapsed since the day when a large and fruitful nation was given to the world. The prosperity of our country is unparalleled in the annals of history. Peace and plenty have united to bless her inhabitants. Every description of creeds and endless varieties of faith have their votaries, and flourish under the protection of a generous system of laws. Learned institutions are encouraged and thrive among us; and there is reason to believe that the hour is rapidly advancing in which every individual in our extensive territory will be properly qualified to exercise the great functions to which he is eligible. From Maine to Mexico, and from the Atlantic to the western wilds, the same smiling scene is displayed.

Combination of a corrupt clergy the worst of evils.

Why interfere with our prosperity.

Your memorialists would inquire if, in this general prosperity, the friends of religion and morality have any well-founded cause of discouragement? The countless evils that must flow from the least interference of the general government with the view of favoring a religious party are such as, in their consummation, would prove destructive to our national existence. It is impossible, on an occasion like the

present, not to advert to the misery which has flowed from the assumption of ecclesiastical dominion in other countries. There are regions where persecution even now erects her blood-stained banner, and demands unnumbered victims for her unholy service. The past history of the church furnishes a melancholy demonstration of the danger to be anticipated from an alliance of the ministers of religion with the civil magistracy. There is no language which can adequately describe the abuses which have been practiced, the diabolical cruelty which has been perpetuated, and the immense amount of suffering which has been inflicted under the plea of defending the cause of religion. The beauty of youth, the venerable decrepitude of old age, and the power of rank, were equally incompetent to relax the iron grasp of the church.

Persecution not entirely a thing of the past.

Shameful pretenses.

Your memorialists would also suggest that the liberal provision made by our Constitution for the exercise of individual rights, and the encouragement given to enterprise and talent, have invited to our shores multitudes of honest and ingenious artists. Fleeing from persecution in the land of nativity, they have sought a home in the only country under heaven where liberty can be said to dwell. Here they calculated to be delivered from those galling restrictions which had rendered existence wretched; and here they have not, as yet, been disappointed: we owe it to them, as well to ourselves, to employ every energy to perpetuate our excellent government, and to defend it from the attacks of insidious enemies.

Preserve our freedom.

Your memorialists repose, with the fullest confidence, in the wisdom and integrity of their representatives in Congress. They cannot, however, leave the subject without the expression of their sincere approbation of the manner in which the question

Guard against further attacks.

Action suggested.

now under consideration was disposed of in the last session of your body. They would, therefore, respectfully ask that, not only should the prayer of the petitioners be rejected, but that such order shall be taken on the question as will forever preclude its revival.[1]

Reason therefor.

[1] The reason for forever precluding its revival was because they held freedom in religion to be a fundamental right of man, and therefore any kind of legislation thereon was illegitimate. They believed, like Jefferson, that though one legislature could not control another, the influence of a positive stand would have a marked influence on the action of succeeding legislatures. And such it had. The reports of the Senate and House of Representatives proved to be so forceful in molding public opinion that two generations passed before the reintroduction of the question into the debates of Congress. Precedent is a power for good as well as for evil; and the prevalence of religious liberty maxims in the short history of America has ever been a powerful factor in defeating attempts at religious legislation. It is well nigh impossible to get a legislature to enact a rigid Sunday law, and so the Sundayists are compelled to ransack the musty statute-rolls of past centuries, and revive the gruesome corpses long since dead, in order to carry forward their work of prosecuting American citizens for working upon a day that is regarded by another as holy time. It seems to be difficult for us to learn that all others are entitled to the same liberty that we ourselves are; that whatever claims we make for ourselves and those who agree with us, we should extend to those who differ from us in belief and practice. "Proscription," very truly remarks the historian, John Clarke Ridpath, "has no part nor lot in the modern government of the world. The stake, the gibbet, and the rack, thumbscrews, swords, and pillory, have no place among the machinery of civilization. Nature is diversified; so are human faculties, beliefs, and practices. *Essential freedom is the right to differ*, and that right must be sacredly respected." "Hist. of the World," ed. 1885, vol. iii, p. 1354.

Effect of Johnson's reports.

Old laws enforced.

Proscription uncivilized.

In what true freedom consists.

But the guarantee of this very right which was thought to be firmly imbedded in our political system is the very guarantee which the Sundayist would eliminate. Instead of allowing the natural development of individuals in society and the free contest of religion in the forum of public discussion, they would compel all to adopt their customs and force their religious views upon those whom they seem to think are in need thereof. But as all such attempts have worked in the past, so will such attempts work to-day; law will be set aside and force will be enthroned instead; the whims of man will usurp the place of right, and justice will be forgotten.

21ST CONGRESS] [2ND SESSION

KENTUCKY'S REMONSTRANCE.

Jan. 31, 1831.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, JAN. 31, 1831.

To the Congress of the United States:

The undersigned, citizens of Kentucky, by way of remonstrance, would respectfully represent:

Efforts of Sunday-law advocates.

That, from the public journals, they learn that numerous petitions have been presented to both houses of Congress, praying for such a modification of the laws concerning the Post-office Department as to prevent the transportation and opening of the mail on the Sabbath day.

Arguments suggested.

It appears that the reasons or arguments on which these petitions are founded principally resolve themselves into two: First, that the transportation and opening of the mail on the Sabbath tend to impair the moral influence of that day; and, secondly, that conscientious Christians are precluded from an equal participation in the emoluments of office.

Necessity of religion and morality.

Sensible as we are of the advantage, nay, of the necessity, of cultivating morality as a means of preserving our republican institutions in their purity, we should lament any and every act of the general government, or its functionaries, which might have a tendency to impair moral influence of any kind.

Object of post-office.

But, when we consider the objects for which the post-office establishment was instituted, we are of the opinion that the effectuation of these objects, deemed important to the safety and to the pros-

1 "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, pages 261, 262. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

Necessities of the community.

perity of the whole community, will justify, if they do not imperiously require, the constant employment in the Post-office Department of one individual out of many thousands, for the transmission of information necessary for the government, desired by the people, and useful to them in all their various concerns, whether political, agricultural, manufacturing, commercial, or religious.

Necessity of its work.

To preserve and secure the peace and safety of the whole was the first great object leading to the formation of the general government. That it might be enabled, more effectually than the States separately could, to hear, see, speak, and act for the whole, with a view to ward off or repel whatsoever should menace the peace or prosperity of all or any part, numerous important powers were given by the Constitution. Among these, that of "establishing post-offices and postroads" is a most important auxiliary. It is through this channel that the government is enabled at all times to hear from without, and to speak from within, through its functionaries, whatsoever is necessary for the security of the whole.

Past efficiency.

During the short existence of our federal government, insurrection, conspiracy, and war have successively invaded our land and disturbed our peace. In detecting their schemes and suppressing their progress, the importance of the operations of the Post-office Department must be acknowledged by all; and, as the approach of dangers is not arrested by the Sabbath, so neither should the vigilance of the government be intermitted for a seventh part of its time. As, by the warning voice of the watchman on the tower, the city prepares for defense, so also, by the continual cry of "All's well," in time of peace, the busy multitude within, composedly enjoy a conscious security. The officers of our government, civil and military, chosen by the people, or ap-

pointed by a vigilant executive, placed in foreign countries, and within and around our extended borders, maritime and territorial, are our watchmen; and through the mail, at all times, their warning or their composing voice should be heard. The continual operation of the mail, then, is only in compliance with one of the great duties of the federal government; and we cannot perceive how the necessary performance of a high public duty on the Sabbath can impair the moral influence of that day.

Our governmental system.

The petitioners, holding the first day of the week as the Sabbath, to be exclusively devoted to religious exercises, consider that the present laws and regulations relating to the Post-office Department tend to prohibit "the free exercise of religion," because of their conscientious scruples against performing official duties on Sunday. Claiming credit as they do for their superior *republican* patriotism, in thus wishing to chasten the morals of the nation, how can they ask such a change of the laws, as, while it relieves themselves, places other of their fellowcitizens in precisely the same predicament from which they would escape? Will they answer that it is because a large *majority* of the religious professors in the United States agree as to their Sabbath? — Surely not; because the constitutional prohibitions intended to secure the rights of conscience were introduced solely for the purpose of protecting the rights of *minorities* in matters of conscience. The aggregate of all the professors in all the sects forms but a small minority of the people whose interests would be affected by the change; the petitioners, it is believed, only a small portion of that minority. And, if we may judge from the number and respectability of those who have filled the offices of the department, from the highest to the lowest, many of them professors of religion, we must believe that the

An unwarrantable position.

Rights of minorities.

Effect of refusal.

number who would be excluded from office by their conscientious scruples would be astonishingly small; so small, indeed, that their numbers would be far short of that sect (whose religion, however denounced by the petitioners, is equally protected by the Constitution) who pay a sacred regard to the ancient Sabbath, the seventh, instead of the first day of the week.

Liberty of argument granted.

Not disposed to implicate the motives of the petitioners in asking the change, as they have done the motives of those who enacted and those who now prefer the existing laws, we are willing to concede to them an unconsciousness of the evils which would be the consequence of their measures. It is rather a matter of congratulation that their right to petition for a redress of even imaginary grievances is guaranteed by the same instrument which secures to all the right of conscience. It is from the same high authority that we claim the right to remonstrate against the changes they propose; changes which, besides weakening the government, by relaxing its vigilance, would tend to introduce the very evils against which the first article in the amendments to the Constitution was intended to guard — the blending of religious creeds with civil polity, or, in other words, the ultimate "union of church and state."

Evils invited.

Our government knows no religion.

Acting according to the spirit of the Constitution (to its praise be it spoken), our government, as such, inquires not, and knows not, what is orthodox in matters of religion. All who are subject to its authority, as well as all who are employed in its service, are regarded equally as citizens, irrespective of their professions or creeds. And however long and generally the functionaries of our government, in their individual or corporate capacities, may have conformed to the general and laudable custom of observing the Sabbath, it has been vol-

Sabbath observance voluntary.

untary. But when once the Congress shall have assumed the right of deciding by a legislative act the orthodoxy of this or any other point of religious controversy, the magic spell will have been broken which has excluded religious intolerance from our civil tribunals.

Consequences of one religious decision.

The next step, after selecting by law a day for religious worship, will be to enforce its observance. This point attained, it will be deemed requisite that the functionaries of government shall be professors; and the *profession* of religion will soon be considered and assumed as a qualification paramount to those of political information and practical experience. The people once accustomed to regard the religious professions of men as a test of qualification for office, how easy it will be to transfer the test of *profession* in a candidate to the particular *modification* of his faith. Hence will arise a theater for the exhibition of all the activity, all the ambition, and all the intolerance of sectarian zeal. Some sect, whose tenets shall at the time be most popular, will ultimately acquire the ascendancy.

Compulsory Sunday observance will follow.

Further steps.

The civil and ecclesiastical power once united in the hands of a dominant party, the people may bid adieu to that heart-consoling, soul-reviving religious liberty, at once the price of the patriot's blood and the boon of enlightened wisdom; a liberty nowhere enjoyed but in the United States; a liberty which, the early history of our own country teaches us, the first settlers of America, who fled themselves from religious persecution in the *Old* world, denied to their fellow citizens in the *New*, so soon as they, in the administration of their government, introduced the dangerous principle of making religious opinion a test of qualification for civil power.

Formalism resulting.

It was to secure the inestimable privilege of worshiping God according to the dictates of conscience,

Reasons for Constitutional guarantees.

against the misguided zeal of even their own representatives, that its enlightened framers ingrafted into the federal Constitution the prohibitory clauses on congressional legislation. And here we will take occasion to express our high admiration and unqualified approbation of that inestimable principle established in the Constitution — of leaving the religion of the people free as the air they breathe from governmental influence.

Americanism true Christianity.

That principle, the offspring of American patriotism, in its benign, liberal, and comprehensive design, emulates the great, the obvious, the benevolent attributes of the Deity, who, in the bounteous dispensations of his providence to the inhabitants of earth, as the kind Parent of all, regards not the times or seasons of their devotional exercises, but, with liberal and impartial hand, "makes his sun to shine on the evil and the good, and sends the rain upon the just and the unjust," imparting to all in the same latitudes the same principles of nature, which afford them health and sustenance; leaving the degree of their enjoyment of his blessings to depend on the industry with which they shall imitate his untiring bounty, to the diligence with which they shall seek truth, and to the sincerity with which they shall cultivate towards each other that universal benevolence which he so freely bestows upon all.

Ways of Providence.

Necessity for maintaining our present laws.

Entertaining these views, the undersigned would earnestly, but respectfully, remonstrate against any change in the existing laws whereby the celerity of communicating information may be diminished; but more especially against any legislative act, which might by any possibility be construed into a preference for any one mode of faith or religious opinion whatever.

January, 1831.

21ST CONGRESS] [2D SESSION

CHRISTIAN PARTY IN POLITICS.

COMMUNICATED TO THE HOUSE OF REPRESENTATIVES, FEBRUARY 24, 1831.

Vermont convention.

At a large and respectable meeting of the citizens of Windham county [Vt.], convened agreeably to previous notice, at the hall of E. Lincoln, in Wilmington, on the 12th day of January, 1831, General Abner Perry of Dover, was called to the chair, and Samuel P. Skinner appointed secretary.

On motion, the following resolutions were unanimously adopted:

Christian party in politics condemned.

Resolved, That we disapprove of the measures adopted by a certain party, styling themselves the Christain party in politics, which, under moral and religious pretenses, are officiously and unremittingly intermeddling with the religious opinions of others, and endeavoring to effect, by law, and other means equally exceptionable, a systematic course of measures, which, we believe, are tending to favor the dominancy of particular creeds, militating against the equal rights and liberties of all, infusing a spirit of religious intolerance and persecution into the political institutions of the country, and which, unless opposed, will result in a union of church and state, a change in the character of our government, and the destruction of the civil and religious liberties of the people.

Their systematic work.

Will pervert our political system.

Appointment of committees.

Resolved, That a committee of seven be appointed to draft resolutions expressive of the sense of this convention.

1 "American State Papers: Documents, legislative and executive, of the Congress of the United States," class vii, pages 263, 264, 265. Selected and edited, under the authority of Congress, by Walter Lowrie, Secretary of the Senate, and Walter S. Franklin, Clerk of the House of Representatives. Published at Washington, 1834.

Resolution.

Resolved, That a committee of seven be appointed to draft a memorial to Congress against the petitions for a proposed restriction of the post-office regulation in relation to Sabbath mails.

Committees appointed.

In pursuance of the second resolution, the following gentlemen were appointed a committee: H. H. Winchester of Marlborough; General Aaron Barney of Guilford; Ebenezer Jones, Esquire, of Dover; Jonathan Flagg, Esquire, of Wilmington; Silas Lamb of Newfane; Rufus Carley of Whitingham, and James Plumb of Halifax.

In pursuance of the third resolution, the following gentlemen were appointed a committee: Hon. John Roberts of Whitingham; Colonel John Pulsipher of Wilmington; Russel Fitch, Esquire, of Brattleborough; J. D. Bradley, Esquire, of Westminster; E. Ranson, Esquire, of Townshend; R. M. Field, Esquire, of Newfane; and Colonel William Ackerson of Rockingham.

Adjournment.

On motion, it was unanimously voted to adjourn this convention to meet again on the 19th instant, at the hall of Anthony Jones, in Newfane, at eleven o'clock, A. M., when and where the friends of civil and religious liberty in the county of Windham are respectfully invited to attend.

Voted, That the proceedings of this convention be signed by the chairman and secretary, and a copy thereof transmitted to the printer of the "Brattleborough Messenger," with a request that he publish the same.

ABNER PERRY, Chairman.

S. P. SKINNER, Secretary.

SECOND MEETING.

Second religious liberty meeting.

At an adjourned meeting of the friends of civil and religious liberty in the county of Windham, holden at the courthouse in Newfane, on the 19th day of

January, 1831, General Abner Perry in the chair, the following memorial was reported by R. M. Field, Esquire, chairman of the committee appointed to draft the same. Memorial drafted.

MEMORIAL TO CONGRESS.

To the Senate and House of Representatives of the United States of America in Congress assembled:

The memorial of the undersigned, in behalf of the citizens of the county of Windham and State of Vermont, respectfully represents:

That your memorialists have observed with unfeigned concern the efforts which have been made, and, as they believe, are still being made, to procure the passage of a law of Congress, prohibiting the transportation of the mail on the first day of the week; and although your memorialists repose entire confidence in the wisdom of the national councils, yet they are impelled, by a sincere conviction of the pernicious tendency of the proposed law, to approach your honorable bodies, and respectfully submit their views to your consideration. Efforts of Sundayists.

Your memorialists would not have deemed it their duty to come before the national Legislature at this time with any expression of their sentiments, if the petitioners against Sunday mails had founded their request in motives of state expediency or public convenience; but they have remarked with anxiety and alarm, that the proposed law is solicited on the assumed ground that the first day of the week is set apart by God for rest and religious worship. This request is a source of anxiety to your memorialists, because it presents to your honorable bodies a question of a purely religious nature; and of alarm, because the decision of that question necessarily involves a principle dangerous, as they believe, to the rights and liberties of the citizen. Need of remonstrance. Dangerous propositions made. Questions involved.

Diversity of views on the Sabbath question.

Your memorialists will here observe that the divine institution of the Sabbath, upon which the request of the petitioners is founded, is by no means assented to by the whole Christian church. On the contrary, many learned and pious prelates have contended, with great force of argument, that the Sabbath was an ordinance applicable only to the Jewish nation, and that it was abolished along with other Jewish ordinances, on the coming of Christ. Your memorialists are disposed to waive the discussion of the merits of this theological controversy, as well from a regard to the unprofitable nature of the controversy, as from the consideration that they are addressing not an ecumenical council of the church, but the constituted organs of civil government. But believing, as your memorialists do, that in the passage of the proposed law, the power of Congress to decide this religious dispute, to determine the divine institution of the Christian Sabbath, and to declare its inviolability, is necessarily implied, they will meet the question on the simple ground that no such power is vested in your honorable bodies, and that its exercise would be repugnant to the spirit of our institutions and the letter of the Constitution.

Not a civil question.

Its decision repugnant to our Constitution.

Our country embraces various religions.

The government of these States embraces within the pale of its protection the followers of various religions and sects, distinguished by different and often opposite rules of faith, doctrines, and modes of worship. To all these, whether Jews, Mahometans, Pagans, or Christians, it is the design of the Constitution and the duty of the Legislature to extend equal rights and privileges. To recognize by law the divine origin of the tenets of one sect, to the exclusion of others, would be partial and unjust; and to give a legislative sanction to the truth of the dogmas of all, would be manifestly absurd. Nor could it fail to be perceived

All religions equal.

that as the mysterious and unseen things of religious faith are confessedly above the grasp of human reason, so are they beyond the sphere of human legislation. To avoid, therefore, the injustice of partial legislation and the inconsistency of rectifying contradictory tenets, and also from a regard to the imperfection of human laws, when applied to the sublime mysteries of theology, allwise government has limited its action to civil and political rights and relations alone, the only legitimate subjects of its cognizance; while the religious doctrines and observances of the citizen are left to the direction of his own reason, aided by such manifestations of the divine will as God has vouchsafed to give to his creatures. Upon these principles it is believed that civil authority has been delegated to Congress, and upon them that authority has hitherto been most scrupulously administered.

Religion above human legislation.

Government limited to things civil.

Your memorialists consider the proposed law as inconsistent with those principles, and a clear deviation from that established course of government which reason dictates, and the experience of more than fifty years has sanctioned by the happiest results. They are not, indeed, insensible to the many artful pretexts by which the petitioners have endeavored to conceal their object, for the purpose of escaping from the odium which would justly attach to any request for the legal confirmation of a religious tenet. And while your memorialists condemn the pious fraud which would deceive and mislead the public mind in order to aggrandize a sect, they do not fail to recognize in that fraud a reluctant tribute to the truth of those principles for which they are contending. But, stripped of the disguise in which it is enveloped, and reduced to a plain and intelligible proposition, the request of the petitioners amounts, in the opinion of your memorialists, to nothing less than a prayer to

Sunday laws inconsistent with American principles.

Artful pretexts of Sundayists.

An attempt to establish sectarianism by law.

The real prayer.

your honorable bodies to incorporate a sectarian dogma into the statutes of the land.

Proposal obnoxious to Constitution.

Your memorialists also believe that the proposed measure is obnoxious to an insurmountable objection, derived from that clause of the Constitution which prohibits Congress from passing any law respecting an establishment of religion. The cautious phraseology in which this prohibition is expressed is worthy of notice, as evincing an extreme jealousy of all governmental interference in matters of religion. Your memorialists confess themselves incapable of conceiving any method of establishing a religion, unless it be by the establishment of its tenets; nor are they able to discover any principle which authorizes your honorable bodies to make one dogma of Christians part and parcel of the law of the land, which does not also justify the transposition of their entire creed into the civil code. A religion thus taken into the special favor of the Legislature, and all its doctrines, rites, and ceremonies ratified and promulgated by act of legislation, would constitute an establishment as firm and as perfect as the most zealous bigot could well desire. It would require but an additional act enjoining conformity upon the citizen under pains and penalties, to vie with the corrupt establishments of Europe during the darkest period of ecclesiastical tyranny. Such are the theoretical results of the principle assumed by the petitioners, and such might be its practical consequences.

How religion is established.

Complete establishment.

Next step.

Logical results of proposed legislation.

Therefore unconstitutional.

Your memorialists are, therefore, constrained to believe that the proposed measure may justly be classed under that species of pernicious legislation against which the prohibitory clause of the Constitution just mentioned is specially directed. It is, indeed, objected by respectable authority that the refusal of Congress to prohibit Sunday mails amounts to a decision upon the divine institution of the Sabbath

adverse to the petitioners. To this conclusion your memorialists are unable to bow. Its fallacy lies on the surface, and evidently consists in mingling two distinct inquiries. The divine law is one question, but the power of your honorable bodies to declare that law is quite another; yet the objection confounds both together, and by a wretched logic, perverts a refusal to take cognizance of a religious controversy into a decision of the merits of that controversy.

An obvious fallacy.

Your memorialists cannot discover any real force in the arguments by which the petitioners against Sunday mails have endeavored to fortify their request. The petitioners object that the present law compels the citizen to violate the Sabbath. If, by this objection, they mean to affirm that there is any legal compulsion in the case, the position is evidently false, inasmuch as all contracts with the post-office department are purely voluntary; but if they intend a moral compulsion arising from pecuniary inducements, then, indeed, it has been well answered that their affected piety becomes the mere pretext of a mercenary speculation.

Pretenses of petitioners.

The prohibition of Sunday mails is also defended on the ground that the conscience of the Christain is wounded by what he considers a profanation of holy time. This reason seems to your memorialists entirely unsatisfactory; for, although they would deprecate the infliction of unnecessary pain upon the feelings of any religious sect in the community, they cannot assent to a doctrine by which the operations of government would be necessarily thwarted, and public convenience sacrificed. Neither does the doctrine seem to be susceptible of any just limitation. The Jew, who rests on the seventh day, and the Mahometan, who regards the sixth as sanctified by God and his prophet, may possess consciences as

Grounds of defense.

Logic of the situation.

Rights of Jew and Mahometan.

tender, as, under this government, they surely have rights as sacred as the Christian; yet they witness the like profanation of sacred time.

Nor has it ever been supposed that national wrongs were to remain unredressed, or insulted national honor unavenged by arms, because a numerous and respectable sect could not look upon warfare with conscientious composure. If the consciences of Christians be so rigid and unbending that they cannot attend to the business of the post-office on Sunday, they already receive, in an exemption from duties which they cannot conscientiously perform, all that they can reasonably demand, or the government with propriety or safety grant. Nor is it difficult, in the opinion of your memorialists, to detect in the request of the petitioners a masked intolerance, which, under the pretext of a wounded conscience, would dictate to all mankind, their religious faith and observances.

Service not compulsory.

Real intent of Sunday-law advocates.

Effects of proposed law.

In conclusion, your memorialists would remark, that, as the immediate effect of the proposed law would be the aggrandizement of a sect, so its tendency would be to produce an ultimate union of church and state; and your memorialists do not hesitate to avow their sincere belief that this tendency has mainly instigated the efforts of the petitioners. To no other motive can be imputed the ardor with which those religionists are pressing into the halls of legislation to ingraft their dogmas on the statute books; and to no other cause can be ascribed their intemperate zeal, which in the pursuit of its object, disregards the constitutional barriers erected against ecclesiastical usurpation.

Zeal shown.

Effects of religious establishments.

Against the union of church and state all history raises its warning voice. Religion becomes corrupted and debased by the alliance, and sinks into an intolerant superstition; and civil liberty never yet found a deadlier foe than bigotry armed with the

sword of temporal power. Nor are your memorialists deluded by any professions of benevolent motives on the part of the petitioners. They recognize in those professions the common artifice of ecclesiastical ambition — of that ambition which deceives only to destroy; which rears in its van the emblems of meekness, charity, and philanthropy, and carries in its train the engines of persecution, torture, and massacre; which commences with soothing flattery, and ends in a furious and brutalizing tyranny; which sweeps from its path every vestige of civil and religious liberty, and perishes at last (as perish it must) gorged with human blood, the victim of its own detestable depravity. Benevolence was the pretext of the papal tyranny and its sanguinary persecutions. The massacre of St. Bartholomew's, the butcheries of the Inquisition, and the atrocities without number which stain every page of the Christian annals, were all committed in the name of a merciful God, and through a zeal for the reform of his orthodox church.

Pretended benevolence no excuse.

Results of ecclesiastical usurpation.

End of persecution.

Pretexts of the past.

The true religion of the mild and merciful Jesus, like her author, is meek and humble: she never aspired to earthly dominion, or sought aid from the arm of civil power; the scepter and the diadem of temporal sovereignty are as a brittle reed in her hands and a crown of thorns on her head. Relying on her own excellences, she defies all human opposition, and spurns away the support of all human legislation, as a species of defense suited only to a false and bloody superstition.

True religion needs not governmental aid.

All-powerful in and of itself.

Your memorialists rely with implicit confidence on the wisdom and firmness of your honorable bodies in protecting the civil and religious rights of your memorialists and their fellowcitizens from ecclesiastical encroachments.

On motion of E. Ranson, Esquire, of Townshend, the foregoing memorial was unanimously adopted.

RESOLUTIONS OF THE CONVENTION.

Convention's resolutions.

The following resolutions reported by the committee appointed to draft the same, were unanimously adopted:

Natural rights.

Resolved, That all men have a natural and unalienable right to adopt such modes of worship and such a religious faith as their judgment shall dictate,

Religious authority not delegated.

and that no power is delegated to any legislative body in this country to contravene this right; and that any attempts to settle by law contested or disputed points of religious belief, or to enforce by legislative enactment a construction of the word of God, would be a gross violation of the rights of conscience and a palpable infraction of the Constitution.

Unconstitutionality of proposed laws.

Resolved, That all legislative enactments intended to prohibit the transportation and opening of the mail on the first day of the week are opposed to the spirit and letter of that Constitution which forbids a preference of one religious sect over another, and guarantees equal rights and privileges to all.

Christian party in politics dangerous.

Resolved, That we discover with regret and alarm, in the indefatigable efforts of the Christian party in politics, the germ of that most horrible tyranny, the tyranny of priestcraft, which has for ages wrested from the nations of Europe those inestimable privileges, religious liberty and the rights of conscience.

Colonel Johnson's report approved.

Resolved, That Colonel R. M. Johnson is entitled to the applause and gratitude of his countrymen for his bold and manly efforts in resisting the repeated attempts of the Christian party in politics in obtaining the passage of a law prohibiting the opening and transportation of the mail on the first day of the week, and for his able and talented reports against the prayer of the various petitions for the same.

Resolved, As the sense of this convention, that a committee of five be appointed, who shall be denominated the Central Committee of Vigilance for the county of Windham, whose duty it shall be to call future meetings at such times and places as they shall deem expedient, and to correspond with like committees which now are or may hereafter be appointed in other counties in this State. Vigilance committee established.

In pursuance of the last resolution the following gentlemen were appointed a committee: Hon. John Roberts of Whitingham; General Aaron Barney of Guilford; Ebenezer Jones, Esquire, of Dover; Thaddeus Alexander, Esquire, of Athens; and Colonel William Ackerson of Rockingham. Committee appointed.

On motion of General M. Field,

Resolved, That our Senators and Representatives in Congress be requested to oppose the passage of any law prohibiting the opening and transportation of the mail on the first day of the week. Resolutions to congressmen.

Resolved, That the foregoing memorial and resolutions, with the proceedings of this convention, be signed by the chairman and secretary, and a copy thereof transmitted to Congress; and that like copies be transmitted to the editors of the "Boston Trumpet" and "Brattleborough Messenger," with a request that the same be published.[1] Publication of resolutions.

ABNER PERRY, Chairman.

S. P. SKINNER, Secretary.

[1] These resolutions went up from all parts of the country after the people saw the earnestness and importunity with which the Sundayists were pressing their claims. But both in that campaign and the campaign sixty years later, it was not until it seemed that Sundayism would be triumphant that the friends of religious liberty were aroused. There is sometimes danger that from mere indifference the freedom guaranteed by our fundamental charters will be taken away, and that minor religious sects of the country will suffer in consequence — to what extent only time itself will show.

Nov. 27, 28, 1844.

RESOLUTION CONCERNING THE DESECRATION OF THE LORD'S DAY BY CONGRESS.[1]

NATIONAL LORD'S DAY CONVENTION, BALTIMORE, MARYLAND, NOVEMBER 27, 28, 1844.[2]

Members of Congress commended.

Resolved, That this Convention hereby respectfully tenders, to such members of Congress as have attempted to prevent the desecration of the Lord's day by the unnecessary extension of legislative action into

1 "Proceedings of the National Lord's Day Convention held at Baltimore on the 27th and 28th of November, 1844," printed at the Publication Rooms of the Evangelical Lutheran Church, No. 7, South Liberty Street, Baltimore, Maryland, 1845, page 56.

Object of convention.

2 This convention, assembled "to devise means for the promotion of the sanctification of the Lord's day," was held in the First Baptist Church in Baltimore, Maryland, November 27 and 28, 1844. It was attended by 1,711 delegates, from eleven different States, representing various Protestant churches, largely Presbyterian, Methodist, and Baptist, and a number of Sabbath associations. It was presided over by John Quincy Adams, Ex-President of the United States, Rev. Dr. Justin Edwards, of Massachusetts, being chairman of the standing committee appointed for the convention, and one of the leading spirits in it.

J. Q. Adams presided

Twenty-six resolutions regarding the nature, object, and value of the Sabbath institution, and how best to secure Sabbath observance, were adopted; and "An Address to the People of the United States" on the subject, prepared, the same being signed, in behalf of the convention, by "John Quincy Adams, President."

A disturbing resolution.

All went well until near the close of the convention, when Rev. H. A. Boardman, D. D., of Philadelphia, enquired whether a resolution submitted by him "touching the desecration of the Sabbath by Sabbath meetings in Congress," which had been referred to the standing committee, had been reported by them to the convention. The resolution as first prepared, read as follows:

"*Resolved,* That this Convention express their deep regret that the Congress of the United States has, in repeated instances within the last few years, deemed it expedient to continue its sessions through the whole or a part of the Sabbath; and they record it as their deliberate conviction that the National Legislature should ab-

sacred time, its unanimous commendation; and further expresses the hope that similar efforts hereafter will be sustained by a majority of their honorable body.

stain from this practice for the future." "Proceedings of the Convention," page 43.

Dr. A. D. Eddy, explaining why the committee had not deemed it expedient to report the resolution, said:

Why committee considered resolution inexpedient.

"They did not deem it expedient to invite the action of the body upon it, because they understood the convention to be of such a character as rendered it inexpedient for them to present themselves before the world in conflict with the laws of their country, or as impeaching the conduct of our national legislators. They understood this assemblage to occupy a position sublimely remote from all such conflicts. Our public representatives were responsible to the Constituition, to the laws, and to their own constituents. The committee did not feel themselves, or the convention, at liberty to impeach the conduct of the national Legislature." "Proceedings of the Convention," page 41.

Resolution re-introduced.

After the standing committee had been discharged, Dr. Boardman, urged by friends, he said, introduced his resolution again. This precipitated a lively and heated discussion, some desiring the resolution passed in disapproval of "the great national sin" of Sabbath desecration, and as a rebuke to "sin in high places;" others opposing it as an action which might involve the convention in a "collision or controversy with the national Legislature."

As finally passed.

After four amendments and substitutes had been offered, the convention finally passed the resolution given at the beginning of this section, tendering its commendation to those members of Congress who had sought to prevent what they considered a desecration of the Lord's day in Congress, and hoping for similar conduct on the part of the majority of its members.

The idea prompting the resolution.

One of the substitutes offered, but not adopted, doubtless revealed the paramount idea prompting this whole affair touching Congress and Sunday observance. It recommended "all legislative bodies, whether State or national, to *give the sanction of their example to its observance* by avoiding all ordinary settings for business on that day." This is why national Sunday legislation is wanted now — to give national sanction to Sunday observance, and to the practice of enforcing Sunday observance by law.

The advocates of the theocratical theory of civil government are always watching for an opportunity to secure the power and influence of the state in religious affairs.

September, 1846.

AN APPEAL

TO THE FRIENDS OF EQUAL RIGHTS AND RELIGIOUS FREEDOM IN THE UNITED STATES.

FROM THE SEVENTH-DAY BAPTIST GENERAL CONFERENCE.[1]

Value of liberty.

FELLOWCITIZENS: We fully agree with you in the popular sentiment of our nation, that liberty is sweet — to men of noble minds, much more precious than estates, or treasures of silver and gold — dearer than our reputation and honor among the despots of the world. Was it not this sentiment, firmly rooted in the minds of the fathers of our national independence, which led them to stake their "lives, their fortunes, and their sacred honor," rather than be the serfs of a British king and his aristocratic lords? Applauding their spirit, we know that you will agree with us in the sentiment, that the preservation of that liberty which they achieved and perpetuated in our ever-glorious Constitution, is the highest civil duty which we owe to ourselves, to our posterity, and to our nation. All but coercionists will agree with us, that the preservation of our religious liberty is a sacred duty, which we owe alike to the cause of truth and our political happiness.

Preservation of liberty a sacred duty.

[1] The Seventh-day Baptist General Conference held its forty-second anniversary at Shiloh, New Jersey, on the 9th, 10th, 11th, and 13th days of September, 1846. During the session a resolution was passed expressing the settled conviction of the Conference, "*That all legislation designed to enforce the religious observance of any day for a Sabbath, thereby determining by civil law that such day shall not be used for labor or judicial purposes, is unconstitutional, and hostile to religious freedom.*" A committee was appointed to prepare an address to the people of the United States in accordance with the opinion thus expressed. The following is the address reported by the Committee, approved by the Conference, and referred to the American Sabbath Tract Society for publication.

Seventh-day Baptist principles.

Wrongs suffered.

Give us your candid attention, then, while we present a brief statement of the wrongs we are suffering in these United States, despite the principles of the national Declaration of Independence, and the guarantees of our national Constitution.

Seventh-day Baptists revolutionary patriots.

Believing in the integrity of the provisional government which made the Declaration of Independence, our fathers and predecessors in faith fought side by side with yours for the liberty which that instrument declares to be the inalienable right of all men. They were equally zealous parties to the adoption of the Constitution of the United States — that Constitution which says there shall be "no law respecting an establishment of religion, or prohibiting the free exercise thereof."

Constitutional provision.

"And the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Although our brethren at Ephrata, in Pennsylvania, regarded warfare and the shedding of blood as inconsistent with the Christian profession, yet they were no less ardent admirers of those national instruments by which American liberties were asserted and established. Of this they gave ample proof, in the unwavering support which they ever voluntarily rendered to the national government and its troops, by all the peaceable means at their command. History records an act of patriotism and piety, which reflects everlasting honor on their names. They voluntarily and compassionately received, at their establishment, between four and five hundred wounded Americans who had fallen in the battle of Brandywine, fed them from their own stores, and nursed them with their own hands, for which they never received nor asked a recompense of the American government or people. It was enough for them that they were their fellowmen. But it stirred their hearts the deeper,

Revolutionary services.

Feelings aroused.

that they knew they were bleeding in the cause of sacred liberty.

Descendants of patriots.

We are the descendants and successors in faith of these parties. We hold the same sentiments, and cherish the same principles, which they did at that time. Is it not surprising, then, that within seventy years after the signing of that declaration, and in little more than half a century after the adoption of the Constitution, the lineal descendants of these parties, and their successors in faith and principles, should have their liberties so abridged by State authorities, as to give occasion for an appeal to the citizens of the whole nation,— from whom the sovereign power emanates, for a redress of their wrongs? But so it is. Religious zealots, in our State Legislatures and on the judicial bench, have violated the Constitution of the nation, established an article of their religious creed, and made it penal for others of different sentiments to follow out their own honest convictions of duty to God. The consequence is that eight of our brethren are at this moment under judicial sentence for their religious sentiments, and condemned to pay four dollars each, with costs of prosecution, or suffer imprisonment in the common jail. It is not pretended that they have injured the persons or wronged the estates or interests of any of their fellowcitizens. Neither is it pretended that they are lewd or intemperate persons, or profaners of churches. The only pretense is, that they have injured the religious feelings of some others by peaceably working upon their own farms on the first day of the week, in obedience to the dictates of their own consciences and the law of God. And this is the second time, within the space of one year, that the persecution of these otherwise unoffending men, has been approved by the courts of Pennsylvania. In four other States of the Union, in defiance of the

Now being persecuted.

Sentenced to jail.

Repeated prosecutions.

national Constitution, our fellowcitizens have suffered prosecutions, fines, and imprisonment, within the past year upon similar charges. Besides this, in the States where toleration is provided for labor on our own farms and in our own work-shops on the first day of the week, all contracts, legal and commercial transactions, if done even among ourselves, are declared null and void by the State statutes. So that, even in these States, we are deprived of our constitutional and inalienable right to use one-sixth part of our time for commercial, legal, and judicial transactions; and then are tied up to our own premises, as though we were as dangerous to the religious interests of our fellowcitizens, as rabid animals are to their persons.

Unlawful prosecutions.

Even with exemptions injustice is done

Treatment of Sabbatarian Christians.

Applications were made to three State Legislatures during the winter of 1845–'46, for relief from these odious statutes. But those applications were all repulsed with supercilious denials. Forbearance is no longer a virtue. A succession of abuses and usurpations of our rights, has compelled us to take measures to resist, with all the legal means in our power, and with all that we can honorably acquire, whatever laws abridge the rights or coerce the consciences of ourselves or our fellowcitizens on religious or sectarian considerations. Appealing to Jehovah and his holy law for the rectitude of our principles and the righteousness of our cause, we have implored, and shall continue to implore, the interposition of his providence to succeed our efforts.

Petitions for redress repulsed.

Without wishing to disturb the peace of society, or wantonly to overturn the existing order of things, but actuated solely by a sense of duty to maintain the integrity of God's law, and preserve unimpaired our religious privileges, we appeal to you, fellowcitizens, in defense of the justice of our demands, by a fair representation of our constitutional rights.

Appeal for constitutional rights.

Constitutional provisions.

The sixth article of the Constitution of the United States, section second, says, "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Section third says, "The members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to office or public trust under the United States."

In the amendments to the Constitution, article first, it is written, "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

Religious statutes unconstitutional.

In view of these sections of the fundamental law of the nation, what can be more palpably unconstitutional than those State statutes which are so framed as to declare and establish the first day of the week as "the Christian Sabbath" or holy day. The State statutes which subject any citizen to fine or imprisonment for labor, or any legal transaction on the first day of the week, as far as their influence extends, make void God's everlasting law, and subject the conscientious servant thereof to punishment for a strict conformity to it. The State statutes violate the Constitution of the United States in two respects. First, they violate that part of the Constitution which forbids the enactment of any "law respecting an establishment of religion;" because by them the religious observance of the first day is made a State establishment of religion as really and arbitrarily as the law of Constantine made it a part of the religion of the Roman empire. Sec-

How the Constitution is violated.

ond, they violate that part of the Constitution which forbids the making of any law "prohibiting the free exercise" of religion; because, by forbidding labor on the first day of the week, they prohibit a strict conformity to the law of God, which says, "Six days shalt thou labor and do all thy work, but the seventh day is the Sabbath of the Lord thy God." With this view of the subject, we submit it to the common sense of candid men to say, if every judicial officer who convicts or passes sentence upon his fellowcitizens for disobeying these arbitrary statutes on a charge of Sabbath-breaking, is not a perjured man. He swears or affirms to "support the Constitution of the United States, anything in the Constitution or laws of any State to the contrary notwithstanding;" yet he administers a law which establishes a sectarian article of religion, and punishes conscientious men for a free exercise of their own religious opinions, and for doing what they esteem to be their duty to God.

Violation of Constitution.

Conviction of Sabbatarians unlawful.

Heretofore we have asked only for exemptions from these odious statutes for all such as observe the seventh day of the week as the Sabbath, and we have generally been permitted to pass peaceably along. But of late our growing numbers, and our increasing influence in the nation, together with the use of the public press in defense of our sentiments, have seemingly made us too odious in the eyes of some of our fellowcitizens to be suffered peaceably to enjoy our rights. Powerful efforts are being made to inflame the public mind against us, to influence the magistracy to enforce the Sunday laws now existing, and if possible to procure the enactment of others more stringent and restrictive. These things have thrown us unavoidably upon our constitutional rights. Experience teaches us that our peace and liberty are continually jeopardized by the existence of statutes

Determined to stand upon constitutional rights.

Efforts being made to prejudice people.

Liberty endangered.

which can be so construed as to coerce us, contrary to our consciences, to do reverence to the first day of the week as a holy day.

A logical demand.

We therefore demand the entire repeal of all laws for coercing the observance of the first day, as being contrary to the spirit and the letter of the Constitution of the United States.

A uniform construction of Constitution.

The view which we take of this subject is not from a partial construction of the Constitution. That instrument has been so construed by impartial and competent authority. The following extract from a letter written by George Washington, while president of the United States, and who was president of the convention for framing the Constitution, to a committee of a Baptist society in Virginia, in answer to an application to him for his views of the meaning and efficiency of that instrument to protect the rights of conscience, decides the intent of the framers of the Constitution, and consequently the intent of the Constitution itself. The letter is dated August 4, 1789, and reads:

Washington's views.

Washington's letter.

"If I had the least idea of any difficulty resulting from the Constitution adopted by the convention of which I had the honor to be president when it was formed, so as to endanger the rights of any religious denomination, then I never should have attached my name to that instrument. If I had any idea that the general government was so administered that liberty of conscience was endangered, I pray you be assured that no man would be more willing than myself to revise and alter that part of it, so as to avoid all religious persecution. You can, without doubt, remember that I have often expressed my opinion, that every man who conducts himself as a good citizen, is accountable alone to God for his religious faith, and should be protected in worshiping God according to the dictates of his conscience."[1]

Only limitations of good citizenship.

[1] This letter was translated into the German at Ephrata, Pennsylvania, and the present copy of the letter is probably a re-translation of it into English from the German.

The Senate so interprets Constitution.

The Congressional Committee on Post-offices and Post-roads, to whom were referred certain memorials for prohibiting the transportation of mails and the opening of post-offices on Sunday, in the forty-third session of Congress, A. D. 1830, reported unfavorably to the prayer of the memorialists. Their report was adopted and printed by order of the Senate of the United States, and the committee was discharged from the further consideration of the subject. That committee take the same view of the intent of the Constitution as did General Washington. They say:

Senate report.

"We look in vain to that instrument for authority to say whether first day or seventh day, or whether any day, has been made holy by the Almighty. . . The Constitution regards the conscience of the Jew as sacred as that of the Christian; and gives no more authority to adopt a measure affecting the conscience of a solitary individual, than that of a whole community. That representative who would violate this principle, would lose his delegated character, and forfeit the confidence of his constituents. If Congress should declare the first day of the week holy, it would not convince the Jew nor the Sabbatarian. It would dissatisfy both, and consequently convert neither. . . . If a solemn act of legislation shall in one point define the law of God, or point out to the citizen one religious duty, it may with equal propriety define every part of revelation, and enforce every religious obligation, even to the forms and ceremonies of worship, the endowments of the church, and the support of the clergy. . . . The framers of the Constitution recognized the eternal principle, that man's relation to his God is above human legislation, and his rights of conscience inalienable. Reasoning was not necessary to establish this truth; we are conscious of it in our own bosoms. It is this consciousness

Sunday legislation not in the province of government.

Religion above human legislation.

Power of true religion.

which, in defiance of human laws, has sustained so many martyrs in tortures and flames. They felt that their duty to God was superior to human enactments, and that man could exercise no authority over their consciences. It is an inborn principle, which nothing can eradicate. . . . It is also a fact that counter memorials, equally respectable, oppose the interference of Congress, on the ground that it would be legislating upon a religious subject, and therefore unconstitutional."

Judges also have taken the same position.

Impartial judiciaries have taken the same view of these provisions of the Constitution, and have declared the laws enforcing the observance of the first day of the week unconstitutional as may be seen in Judge Hertell's book "The Rights of the People Reclaimed;" also in "An Essay on Constitutional Reform," by Hiram P. Hastings, Counselor at Law.

Persecution of Baptists.

On the second of October, 1799, at New Mills, Burlington county, New Jersey, a Seventh-day Baptist being indicted before a justice of the peace for working on Sunday, and fined, he appealed. At the trial in court, the foregoing letter from General Washington was produced by the judge, and read in his charge to the jury. The result was acquittal by the jury.

In the year 1845, the court of Hamilton county, Ohio, made a similar decision in a like case, and on similar considerations.

A committee of the common hall of the city of Richmond, Virginia, to whom was referred the case of certain persecuted Jews, have made a like decision on the municipal laws of that city, which have been construed to enforce keeping the first day.

Postal laws in harmony with this view of Constitution.

The post-office laws are framed in accordance with these provisions of the Constitution. The act of March 3d, 1825, section first, authorizes the post-

master to "provide for the carriage of the mail on all post-roads that are or may be established by law, and as often as he, having regard to the productiveness thereof, and other circumstances, shall think proper." Section seventeenth provides, "that every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive by land or water, as well as on other days, at such hours as the postmaster-general shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, on every day of the week, to deliver on demand any letter, paper, or packet, to the person entitled to, or authorized to receive the same. The laws against labor on the first day, in each State where they exist, are obliged to except the mail-carriers and the postmasters.

Provision of law.

Post-offices to be open every day.

But we ask our fellowcitizens to consider by what show of justice, any local tribunal can punish a private citizen for doing that on his own account, which the servants and officers of the United States are doing at the same time, for the use of the people, and by a law of the same government? Suppose a carriage conveying the United States mail, should enter the city of Philadelphia on Sunday; and another carriage, containing goods or wares for the next day's market, should enter at the same time and by the same route; with what show of justice shall the driver of the market carriage be put under arrest and fined, and the driver of the mail carriage go free? Or suppose there should be a postmaster assorting his letters on the first day and a fellowcitizen selling pens, ink, paper, and wafers to write the same letters in another part of the same building; with what show of justice shall the tradesman be fined and the postmaster go free? The officers of the United States government have no national rights above

Injustice done.

The law knows no exception.

the humblest citizen. The transgression of law by them is as really a crime as in the case of any other citizen. Our government knows nothing of those kingly rights which set emperors, monarchs, and their servants above law. If, therefore, there is no transgression of constitutional law in carrying the United States mail on the first day, then there is none in a private citizen following his otherwise lawful and peaceable occupation on the same day.

Gross misrepresentations of Baptist views.

In some quarters, during the last year, our motives and designs were grossly misrepresented by prejudiced persons, in our legislatures and elsewhere. We were represented as "wishing the legislature to change the Sabbath from the first to the seventh day of the week;" and were accused of "covertly wishing to compel our fellowcitizens to keep our Sabbath day." No insinuation could be more grossly deceptive — no accusation more flagitiously unjust to us as a people. We declare unequivocally, that we do not desire any such thing. We believe that keeping the Sabbath day is purely a religious duty. All we ask is, that our State Legislatures leave the matter where the Constitution of the United States and the laws of the general government have placed it. They have no more right to determine this religious duty, than they have to determine the rites of Christian worship. We believe our fellowcitizens ought to be protected in the peaceable observation of their day of religious rest, as in the observance of every other religious institution, except where such observance is made a sanctuary for crime. We ask the same protection for ourselves on the seventh day of the week, and nothing more.

Position of Baptists.

Sunday-keepers should be protected.

A logical inference.

If the Constitution may be infringed upon to put down the observers of the seventh day, no one can say how long it will be before other minor denominations may be put down too. Already attempts are

making to exact a confession of faith, unknown to the Constitution, as a qualification for a legal oath. If the religious sanctification of the first day of the week may be enforced by statutory requirements, so may the forms and hours of worship. He who says that there is no danger of the latter being enforced while statutory regulations violate two of the most sacred provisions of the national Constitution, knows but little of the history of mankind, or pays but little attention to the tendencies of human nature. A single standing violation of the Constitution is an example and an authority for others to follow. One religious observance established by law, is the admission of the main principle of national hierarchy, and will come in time to be referred to as authority for similar infractions of the Constitution. The laws for the observance of the first day are, in fact, a union of church and state. It is not pretended that they are designed to subserve directly a political or civil object. It is altogether a religious object which they subserve. It becomes every friend of equal rights as he loves the Constitution of his country, to oppose these infractions of its just principles, until equal liberty is secured to all citizens by statutory provisions, as by the fundamental laws of the nation.

Tendencies toward church and state.

Lessons from history.

Danger from wrong precedents.

Sunday laws purely religious.

Our opponents often remind us of their pretense, that we are under no more restrictions than other citizens; we may do as we please about keeping the seventh day. To this we reply, that the tyrants of the Roman people deprived the republic of its liberties by professing themselves the guardians of their *interests*. "By declaring themselves the protectors of the people, Marius and Cæsar had subverted the constitution of their country." Augustus established a despotism by artfully affecting to be governed himself by the same laws which he procured to be enacted

An absurd pretense.

Roman tyranny.

Specious sophistry.

to take away the rights of the people. These are the same principles upon which religious coercionists conjure us to be quiet under the loss of our constitutional rights. The progress of these things toward despotism is as dangerous in the American republic as in that of Rome, and may be as rapid. Their success would be as deadly to human happiness and all the best interests of mankind, in the nineteenth century, as they were in the decline and fall of the Roman empire. Human nature now affords no better guaranty for the safety of *our* national rights than it did to the Romans at the summit of their greatness. Liberty can be preserved only at the expense of perpetual vigilance, and by the popular support of individual rights. If ever the doctrine which has been urged before one of our legislative bodies, "the greatest good of the greatest number," should become a popular political maxim to justify the course of the many in taking away the rights of the few, the halls of legislation will become scaffolds for the execution of liberty, and that odious principle will be the shroud in which it will be buried. Despots may establish a round of religious observances, and exact an unwilling and insincere conformity to their arbitrary prescriptions; but they can never convince the understanding nor win the heart of one who knows the voice of truth. They can only make him a slave, while the effects of their arbitrary prescriptions on the popular mind will be to wither up all interest in the religious tendencies of an observance sustained only by the enactments of heartless politicians. All that makes religion vital and effective for its own holy objects, expires when the sword is drawn to enforce it. Liberty, humanity, religion, and our national Constitution, then, require that the laws enforcing the observance of the first day of the week should be repealed.

Consequences as evil now as then.

A deceptive maxim.

Religious legislation destroys true religion.

Appeal of American citizens.

As American citizens, as independent freemen, and as responsible stewards of the glorious heritage bequeathed to us by the fathers of the Revolution, we shall, with the aid of the Majesty of heaven, maintain unimpaired the high privileges secured to us by the charter of our liberties. *We ask for no exclusive immunities.*[1] *We disclaim all right of human government to exercise over, or fetter in the least, the religious rights of any being.* Might is not right, neither does the accident of being a *majority* give any claim to trample on the rights of the minority. It is a usurpation of authority to oppress the minority, or set at naught their indefeasible rights. In civil affairs we respect the authorities that be, but in religious service, resent being forced to keep the commandments of men. We recognize the laws of the land in all secular matters, and the laws of God, and of God alone, in religious faith and practice. These are the inalienable rights of all the members of a republic. These are rights reserved by the people to themselves, in the formation of our government, which no power can legitimately wrest from us, and, with the help of God, none shall.

No class legislation wanted.

God's authority alone recognized in religious affairs.

[1] This commendable position has almost invariably been taken by the smaller sects of the country when they have felt the unjust power of government. Although they have demanded that legislatures shall restrict themselves to their legitimate sphere, yet they have over and over again refused to accept special exemptions or immunities from the workings of any law. They have uniformly taken the position that law should have universal application: if right, it should be enforced everywhere without exception; if wrong, it should be repealed. This idea of law was the very one that inspired the colonists to refuse to pay the tax on tea even when its cost was reduced to less than what it had been without the tax. The feeling that one is wronged is a much stronger feeling and a longer-felt feeling than can be any discomfort or pain caused by deprivation of property or imprisonment. An American cares far more for his rights, for his liberty, for the heritage that it has taken centuries to secure, than he does for the discomforts of a prison because of disobedience to an unjust statute. It is therefore not so much to keep himself out of prison as it is to keep unspotted the integrity of human rights that the Sabbatarian demands the repeal of Sunday laws.

THE AMERICAN ANTI-SUNDAY-LAW CONVENTION OF 1848.

AN APPEAL TO THE FRIENDS OF CIVIL AND RELIGIOUS LIBERTY.[1]

DRAFTED BY WILLIAM LLOYD GARRISON.

To the Friends of Civil and Religious Liberty:

Worship an inalienable right.

The right of every man to worship God according to the dictates of his own conscience is inherent, inalienable, self-evident. Yet it is notorious that, in

Garrison's opposition to Sunday-laws.

[1] "Liberator," 18, 11; "Life of Garrison," by his children (Century Company, New York), volume iii, page 222 *et seq.* Garrison was as much opposed to Sunday laws as he was to slavery. Both, to him, were equally violative of human rights and human freedom. "*Certain we are,*" said he emphatically in one of his ringing editorials in the "Liberator," "*that all attempts to coerce an observance of the Sabbath by legislation have been, must be, and ought to be, nugatory.*" "Liberator," 6, 118; "Life of Garrison," volume ii, page 108. He was an earnest believer in the observance of the fourth commandment, but he was, as he said, "*decidedly of the opinion that every attempt which is made to enforce its observance, as a peculiarly 'holy day' by pains and penalties, whether civil or ecclesiastical,* IS POSITIVE TYRANNY, *which ought to be resisted by all the Lord's freemen, all who are rejoicing in the glorious liberty of the sons of God.*" "Life of Garrison," volume ii, pages 111, 112.

Sunday statutes positive tyranny.

Wendell Phillips, that American orator whose powers of speech will be known throughout all time, fully endorsed Garrison's views on Sunday laws. In a letter of February 11, 1848, he says: "His [Garrison's] new Sabbath call," referring to this "Appeal to the friends of civil and religious liberty" "is finely drawn up, I think. I did not sign it, though agreeing with its principles." The call was signed by William Lloyd Garrison, Theodore Parker, Parker Pillsbury, James and Lucretia Mott, C. C. Burleigh, and many others. The anti-slavery workers proved to be a very formidable opposition to the Sundayist of sixty years ago, and had not the mid-century agitation of the freedom of the slave absorbed all other questions at that time, there is little doubt but that the great statesmen, orators, and public men of the day would have accomplished the total overthrow of the Sundayist persecutions which certain zealous religionists had instituted. They even attempted to put a stop to the preaching of the day by throwing abolitionists in jail, an

Wendell Phillips opposed to Sunday laws.

all the States, excepting Louisiana,[1] there are laws enforcing religious observance of the FIRST DAY OF THE WEEK AS THE SABBATH, and punishing as criminals such as attempt to pursue their usual avocations on that day,—avocations which even Sabbatarians recognize as innocent and laudable on all other days. It is true, some exceptions are made to the rigorous operation of these laws, in favor of the Seventh-day Baptists, Jews, and others who keep the seventh day of the week as the Sabbath; but this freedom is granted in condescension to the scruples of particular sects, as a privilege, and not recognized as a natural right. For those (and the number is large, and steadily increasing) who believe that the Sabbath was exclusively a Jewish institution,—"a shadow of good things to come," which vanished eighteen hundren years ago before the light of the Christian dispensation, and therefore that it constitutes no part of Christianity,—*there is no exception from the penalty of the law;* but, should they venture to labor even for bread on that day, or be guilty of what is called "Sabbath desecration," they are liable either to fine or imprisonment! Cases of this kind have occurred in Massachusetts, Vermont, Pennsylvania, and Ohio, within a comparatively short period, where conscientious and upright persons have been thrust into prison for an act no more intrinsically heinous than that of gathering in a crop of hay, or selling moral or philanthropic publications.[2] There is, therefore, no liberty

Generalness of Sunday statutes.

Exemptions an illegal discrimination.

Prosecution for Sunday desecration.

Imprisonment of anti-slavery agitators.

C. C. Burleigh, one of the best of their orators and a warm friend of Garrison's, was arrested by them for Sunday work in vending anti-slavery literature in connection with his anti-slavery preaching on Sunday. Garrison, too, was threatened; which circumstances no doubt had some influence in producing the fervor with which they opposed "*all attempts to coerce the observance of the Sabbath by legislation.*"

[1] Originally a Catholic settlement, where the civil law obtained.

[2] Allusion is here made to the case of Charles C. Burleigh who in February, 1847, was twice put in jail in West Chester, Pa. (the second

No liberty on the Sunday question.

of conscience allowed to the people of this country, *under the laws thereof*, in regard to the observance of a Sabbath day.[1]

Formation of American Sabbath Union.

In addition to these startling facts, within the last five years a religious combination has been formed in this land, styling itself "THE AMERICAN AND FOREIGN SABBATH UNION," whose specific object it is to impose the Sabbatical yoke yet more heavily on the necks of the American people. In a recent appeal made for pecuniary assistance by the executive committee of the Union, it is stated that "the Secretary (Rev. Dr. Edwards) has visited twenty of the United States, and traveled more than thirty thousand miles, addressing public bodies of all descriptions, and presenting reasons why, as a nation, we should keep the Sabbath,— all secular business, traveling, and amusement be confined to six days in a week,— and all people assemble on the Sabbath, and worship God." A "permanent Sabbath document" has been prepared by the Secretary; and "what has already been done will put a copy of this document into more than three hundred thousand families." Still greater efforts are to be made by the "Union" for the furtherance of its object.

Work of Sundayists.

Spirit animating Sundayism.

That this combination is animated by the spirit of religious bigotry and ecclesiastical tyranny — the spirit which banished the Baptists from Massachusetts, and subjected the Quakers to imprisonment and death, in the early settlement of this country — admits of little doubt. It is managed and sustained by those who have secured the enactment of the penal

time for six days), for selling anti-slavery books on Sunday ("Liberator," 17, 54, 59; "Pennsylvania Freeman," March 25, 1847). For the conviction of a Seventh-day Baptist farmer for working, in Pennsylvania, on Sunday, see "Liberator," 18, 119.

[1] The last sentence originally read, ". . . observance or non-observance of the first day of the week as a holy day."

laws against Sabbath-breaking (all that the spirit of the times will allow), and whose disposition it manifestly is, if they can increase their power, to obtain the passage of yet more stringent laws against those who do not "esteem one day above another," but esteem "every day" — who are not willing that any man shall judge them "in respect of a holy day, or of the new moon, *or of the Sabbath*" — and who mean to "stand fast in the liberty wherewith Christ hath made them free, and not to be entangled again with the yoke of bondage." Its supporters do not rely solely upon reason, argument, persuasion, but also upon brute force — upon penal law; and thus in seeking to crush by violence the rights of conscience, and religious liberty and equality, their real spirit is revealed as at war with the genius of republicanism and the spirit of Christianity.

Penalties all that the times will allow.

Sundayists rely upon force.

Believing that the efforts of this "Sabbath Union" ought to be baffled by at least a corresponding energy on the part of the friends of civil and religious liberty; . . .

That the Sabbath as now recognized and enforced, is one of the main pillars of Priestcraft and Superstition, and the stronghold of a merely ceremonial Religion;

Sundayism the stronghold of superstition.

That, in the hands of a Sabbatizing clergy, it is a mighty obstacle in the way of all the reforms of the age,— such as Anti-slavery, Peace, Temperance, Purity, Human Brotherhood, etc., etc., — and rendered adamantine in its aspect towards bleeding Humanity, whose cause must not be pleaded but whose cries must be stifled on its "sacred" occurrence; . . .

Sunday laws in the way of reform.

We, the undersigned, therefore, invite all who agree with us essentially in these views of the Sabbath question, to meet IN CONVENTION, in the city of Boston, on THURSDAY and FRIDAY, the 23d

Call of convention.

Plan of work.

and 24th of March next, to confer together, and to decide upon such measures for the dissemination of light and knowledge, on this subject, as may be deemed expedient.

Need of a day of rest.

In publishing this call for an ANTI-SABBATH CONVENTION, we desire to be clearly understood. We have no objection either to the first or the seventh day of the week *as a day of rest from bodily toil*, both for man and beast. On the contrary, *such rest is not only desirable but indispensable.* Neither man nor beast can long endure unmitigated labor. But we do not believe that it is in harmony with the will of God, or the physical nature of man, that mankind should be doomed to hard and wasting toil six days out of seven to obtain a bare subsistence. Reduced to such a pitiable condition, the rest of one day in the week is indeed grateful, and must be regarded as a blessing; but it is totally inadequate wholly to repair the physical injury or the moral degradation consequent on such protracted labor. It is not in accordance with the law of life that our race should be thus worked, and only thus partially relieved from suffering and a premature death. *They need more*, AND MUST HAVE MORE, *instead of less rest;* and it is only for them to be enlightened and reclaimed — to put away those things which now cause them to grind in the prison-house of Toil; namely, idolatry, priestcraft, sectarism, slavery, war, intemperance, licentiousness, monopoly, and the like — in short, to live IN PEACE, obey the eternal law of being, strive for each other's welfare, and "glorify God in their bodies and spirits which are his,"— and they will secure the rest, not only of one day in seven, but of a very large portion of their earthly existence. To them shall be granted the mastery over every day and every hour of time, as against want and affliction; for the earth shall be filled with abundance for all.

Spirit of Sundayism opposed to freedom.

Right to religious observances.

Nor do we deny the right of any number of persons to observe a particular day of the week as holy time, by such religious rites and ceremonies as they may deem acceptable to God. To their own master they stand or fall. In regard to all such matters, it is for every one to be fully persuaded in his own mind, and to obey the promptings of his own conscience; conceding to others the liberty he claims for himself.

Sunday laws unauthorized.

The sole and distinct issue that we make is this: We maintain that the seventh-day Sabbath was exclusively Jewish in its origin and design; that no holiness, in any sense, attaches to the first day of the week, more than to any other; and that the attempt to compel the observance of any day as "THE SABBATH," especially by penal enactments, is unauthorized by Scripture or reason, and a shameful act of imposture and tyranny. We claim for ourselves, and for all mankind, the right to worship God according to the dictates of OUR OWN CONSCIENCES. This right, inherent and inalienable, is cloven down in the United States; and we call upon all who desire to preserve civil and religious liberty to rally for its rescue. . . .

Rights of freedom in worship.

Unjust accusations.

We are aware that we shall inevitably be accused, by the chief priests, scribes, and Pharisees of the present time, as was Jesus by the same class in his age, as "not of God," because we "do not keep the Sabbath day;" but we are persuaded that to expose the popular delusion which prevails on this subject is *to advance the cause of a pure Christianity, to promote true and acceptable worship, and to inculcate strict moral and religious accountability in all the concerns of life*, ON ALL DAYS OF THE WEEK ALIKE. . . .

March, 1848.

RESOLUTIONS ADOPTED BY THE CONVENTION.

HELD IN BOSTON, MARCH 23 AND 24, 1848.[1]

1. *Resolved,* That they who are for subjecting to fine or imprisonment such as do not receive their interpretation of the Scriptures in regard to the observance of the first day of the week as the Sabbath, are actuated by a mistaken or malevolent spirit, which is utterly at variance with the spirit of Christ,— which, in various ages, has resorted to the dungeon, the rack, the gallows, and the stake, for the accomplishment of its purpose,— and which ought to be boldly confronted and rebuked.

Sunday enforcement actuated by wrong spirit.

2. *Resolved,* That the penal enactments of the State Legislature compelling the observance of the first day of the week as the Sabbath are despotic, unconstitutional, and ought to be immediately abrogated; and that the interference of the state, in matters of religious faith and ceremonies, is a usurpation which cannot be justified.

Sunday laws despotic and unconstitutional.

3. *Resolved,* That as conflicting views prevail in the community, which are cherished with equal sincerity, respecting the holiness of days, and as it is the right of every class of citizens to be protected in the enjoyment of their religious sentiments on this and every other subject pertaining to the worship of God, all classes should be united in demanding a repeal of the enactments alluded to, on the ground of impartial justice and Christian charity.

All classes should unite in demanding their repeal.

[1] The call for this convention, as given in the preceding pages, was issued by William Lloyd Garrison and a score of associates, "To the Friends of Civil and Religious Liberty." In that year an organization called the "American and Foreign Sabbath Union" had been particularly active in urging the enforcement of Sunday observance. The resolutions adopted at this convention are a severe but logical and forceful indictment of all Sunday legislation as unchristian, unjust, and un-American.

Occasion for calling the convention.

4. *Resolved,* That this convention recommends to all the friends of religious liberty throughout the country the presentation of petitions to the next Legislature, in every State in which such laws exist, and protesting against their enactment as an unhallowed union of church and state.

Petitions protesting against State Sunday laws as union of church and state.

5. *Resolved,* That if the Legislature may rightfully determine the *day* on which people shall abstain from labor for religious purposes, it may also determine the *place* in which they shall assemble, the *rites* and *ordinances* which they shall observe, the *doctrines* which they shall hear, the *teachers* which they shall have over them, and the peculiar *faith* which they shall embrace; and thus entirely subvert civil and religious freedom, and enable bigotry and superstition, as of old, to —

The logic of Sunday legislation.

> "Go to their bloody rites again,— bring back
> The hall of horrors and the assessor's pen,—
> Recording answers, shrieked upon the rack,—
> Smile o'er the gaspings of spine-broken men,
> And perpetuate damnation in their den!"

6. *Resolved,* That as it has been found safe, politic, and beneficial to allow people to decide for themselves in all other religious observances, there is no reason to doubt that the same good results would attend their liberation from the bondage of a Sabbatical law; for "where the Spirit of the Lord is, there is liberty."

Liberty in all religious matters best.

GARRISON'S SPEECH UPON THE FOREGOING RESOLUTIONS.

"Of all the assumptions on the part of legislative bodies, that of interfering between a man's conscience and his God is the most unsupportable and the most inexcusable. For what purpose do we elect men to go to the General Court? Is it to be our lawgivers on religious matters? . . . This passing a law

The worst of all assumptions.

forbidding me or you to do on a particular day what is in itself right, on the ground that that day, in the judgment of those who make the enactment, is more holy than another,— this exercise of power, I affirm, is nothing better than usurpation. It is the spirit which in all ages has persecuted those who have been loyal to God and their consciences. It is a war upon conscience, and no religious conclave or political assembly ever yet carried on that war successfully to the end. You cannot by enactment bind the consciences of men, nor force men into obedience to what God requires.

Sunday legislation a usurpation and war upon conscience.

"Who wants to be persecuted on account of his own conscientious views? I will ask the first-day Sabbatarian: Do you claim a right to entertain your views, without molestation, in regard to the holiness of time?—'Most assuredly.' How do you make it out that the first day of the week is the Sabbath?—'I believe it to be so; if it is not, to my own Master I stand or fall. Under a government which avowedly tolerates all beliefs, I claim the right, as a first-day Sabbatarian, to keep that day as the Sabbath.' Well, I do not assail that right. I claim the right also to have my own views of the day; the right to sanctify the first, second, or third, or all days, as I think proper. Now I turn to that first-day Sabbatarian, and ask him how he dares to dictate to me to keep the day which he regards as holy, and to say, 'If you do not obey me, I will put my hands into your pocket, and take out as much as I please in the shape of a fine; or if I find nothing there, I will put you in prison; or if you resist enough to require it, I will shoot you dead.' How dare he do this? If he is not a ruffian, is he a Christian? Talk of the spirit of justice animating the bosom of the man who comes like a highwayman with, 'Do or die!' Who made him a ruler over other men's consciences? In a government which is based

The tables turned.

How dare the observer of the first day dictate to another by law, fine, or imprisonment?

on equality, we must have equal rights. No men, however sincere, are to wield forceful authority over others who dissent from them, in regard to faith and observance. The case is so plain that it does not need an argument; and I am confident that, in the course of a few years, there will not be a Sabbatical enactment left unrepealed in the United States, if in any part of Christendom. It belongs to the tyrannical legislation which formerly sent men to the stake, in the name of God and for his glory, because they did not agree in the theological views of those who burned them.

In just government must be equality of rights.

Sunday statutes relics of Dark Ages.

"In this country one pharisaical restriction after another, imposed by legislation, has been erased from the statute book, in the progress of religious freedom. We now come to this Sabbatical observance as the last, perhaps,— a powerful one at any rate. If the Sabbath day be of God, it does not need legislation to uphold it. There is no power which can prevail against it. . . .

If the Sabbath of God, no legislation needed.

"Why should we attempt to legislate upon a question of this kind? Observe how many differences of opinion prevail, honestly and sincerely, in the world, respecting it. Does any one doubt that the Seventh-day Baptists are sincere? Are they not honest, courageous, self-sacrificing men, those who stand out against the law and public sentiment, for conscience' sake? The men, even though they err, who are true to their consciences, cost what it may, are, after all, those who are ever nearest to the kingdom of God. They desire only to know what is right, and they have the spirit in them to do what is right. The great mass of the first-day Sabbatarians — do they not claim to be conscientious and sincere? And the Quakers, who regard no day as in itself, or by divine appointment, more holy than another,— who will question their honesty or sincerity in this matter?

Different opinions regarding the Sabbath.

"Here, then, are widely conflicting sentiments; but which of these parties shall resort to the arm of violence to enforce uniformity of opinion? The case is easily settled by making it our own, my friends. It is, as truly stated in the call [for the convention], based upon the declaration of Jesus, 'Whatsoever ye would that men should do to you, do ye even so to them.' Now there is no Seventh-day Baptist who would wish to be proscribed for his views, of course. There is no first-day Sabbatarian who wishes a majority to get into the Legislature to pass laws against the observance of the first day of the week as the Sabbath, or who would not vehemently protest against it. 'Whatsoever ye would that men should do to you, do ye even so to them,' and the religionist who is not prepared for this, is to be associated with the scribes and Pharisees of a persecuting age. He is one who joins in the crucifixion of Jesus as a blasphemer. . . .

Question easily settled — apply Golden Rule.

"We tolerate everything, except the opinions of men with regard to the first day of the week! Having very successfully gone thus far, I think we may take the next step, and finish the whole category of religious edicts enforced by penal law. Some of you doubtless remember what a hue and cry was raised by the religious press and the clergy, at the proposition to amend that portion of the Constitution of Massachusetts, which required persons to be taxed for the support of public worship somewhere. But the spirit of religious liberty came up, and said, 'That is tyranny, and the law ought to be,— ay, must be,— repealed.' What was the response of the evangelical press? —'This is an infidel movement! This is an attempt to overthrow Christianity!' And it prophesied that just as surely as the proposed amendment should be adopted, public worship would be sadly neglected. Well, the Constitution was altered, in this respect, notwithstanding this selfish outcry. Is there less of

Should make a clean sweep.

The clerical outcry against abolishing state aid answered.

public worship than formerly? The clergy have never been so well sustained as they now are, and no one laments the change.

The outcry against abolishing Sunday laws as absurd.

"Now the outcry raised against the repeal of all Sabbatical laws, as an infidel movement, is as absurd, as preposterous, as libelous, as the other, and will be found so when those laws cease to be in force. . . .

"What a tremendous outcry was raised in England when Daniel O'Connell, in behalf of Ireland, demanded the passage of the Catholic Emancipation act by the British Parliament! The Protestant clergy and the Protestant press cried out against it. It will never do, they said; the cause of religion will suffer. Where now is the Catholic test? — Gone; its ashes are not to be found; but has any injury followed from its repeal? So with regard to the unrighteous restrictions imposed upon the Jews; they were justified on the ground of Christian vigilance and security. But, during the present Parliament, the Jew in England can now take his position anywhere in the government, as well as the Christian. Does any one suppose Christianity will suffer by this?

Religious tests and restrictions in England abolished.

"Christianity as taught by its Founder, does not need any governmental safeguards; its reliance for safety and prosperity is not on the rack or the stake, the dungeon or the gibbet, unjust proscription or brutal supremacy. No — it is the only thing under heaven that is not afraid; it is the only thing that repudiates all such instruments as unholy and sinful. . . .

True Christianity does not need state aid.

"Let us be careful how we trample on human liberty or human conscience. Said the apostle, 'Every one of us shall give account of himself' — not to the Legislature of Massachusetts, not to the Congress of the United States, but — 'to God.' . . .

Each one accountable to God.

"It is not profane men, immoral men, who are especially interested in this movement. Far otherwise. They are glad, indeed, of any holiday on which to

Priests and rabble unite in persecution.

indulge their animal propensities; but they who go forward in a cause like this must be reformers in principle, and they will assuredly find the evil in the world not with them, but against them. They will find priestcraft on the one hand, and the rabble on the other, joining in a common persecution. Jesus was crucified, not by the chief priests and scribes and Pharisees alone, but it needed the populace to join with them; and then they could nail him to the cross, as they did, between two thieves, for this among other reasons, that he was not of God, because he did not keep the Sabbath day."[1]

Unanswerable arguments.

State Sunday laws still tenaciously clung to.

[1] The foregoing protest against Sunday laws, by William Lloyd Garrison, is a valuable document, and should be preserved and read by all. The arguments he here set forth could never be successfully controverted by his opponents. His prediction regarding the repeal of all such laws, based upon the known worth of his cause and the belief that the majority would choose the right and stand for right principles when clearly set before them, however, has never been fulfilled, and probably never will be. In religious matters, particularly, the majority have never, as a rule, been willing to sacrifice self-interest in behalf of principle, and neither history nor revelation give any assurance that the last generation will be better in this respect than preceding generations have been. Instead of the States repealing their Sunday laws, every effort has been made to retain and strengthen them; and in States and Territories where there are no Sunday laws, and in the national government, which from the first has been without a Sunday law, most strenuous efforts are being put forth to secure such legislation, that the whole country may be committed to this relic of church-and-state union. However successful the movement, it is iniquitous, nevertheless, and all should be warned against it and what must be its evil and inevitable results.

A correct observation.

Mr. Garrison correctly observed that to secure the crucifixion of Jesus it was necessary that the chief priests and scribes and Pharisees should be joined by the populace. So we notice that in this Sunday-law movement of to-day church leaders are being joined by labor organizations and the like. And between these two elements, should this movement succeed, the true Sabbath of the Lord, the seventh day, will be as truly crucified, and those who observe it as surely persecuted, as was the Lord of the Sabbath nineteen hundred years ago. Let all take warning, and stand aloof from this unchristian movement.

NATIONAL REFORM ASSOCIATION MEMORIAL TO CONGRESS.[1]

Jan. 27, 1864.

ALLEGHENY, PENNSYLVANIA, JANUARY 27, 1864.

To the Honorable, the Senate and House of Representatives in Congress assembled:

We, citizens of the United States, respectfully ask your honorable bodies to adopt measures for amending the Constitution of the United States, so as to read, in substance, as follows:

A proposed religious amendment.

"We, the people of the United States, humbly acknowledge Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, his revealed

[1] ORIGIN OF THE ASSOCIATION.

American advocates of the Old World idea.

While the nation was in the midst of the throes of the Civil War, the advocates of a union of church and state here,—those who had never outgrown the Old World idea of religious establishments, nor adopted the Christian idea and the American principle of civil government,—seized upon this as a favorable time to press their views upon the national government. Representatives from eleven different denominations met in convention at Xenia, Ohio, February 3, 1863, "for prayer and Christian conference, with special reference to the state of the country." Out of this convention grew what is known as the National Reform Association, the chief object of which, from the first, has been to secure "a religious amendment to the Constitution of the United States."

Origin of the movement.

Delegation to Washington.

At a national convention of this association held in Allegheny, Pennsylvania, January 27, 1864, the above memorial to Congress was adopted, and a resolution passed that it be "circulated throughout the United States for signatures," and that a large delegation be appointed "to visit Washington, and urge the proposed amendment on the attention of President Lincoln," and "endeavor to get a special message to Congress on the subject, and to lay the Memorial before Congress." While this effort did not succeed, persistently from year to year the association has kept holding its conventions, scattering its literature, disseminating its views, and seeking to overturn one of the great fundamental principles upon which the national government was founded, that of religious freedom, or the separation of church and state.

will as the supreme law of the land, in order to constitute a Christian government, and in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the inalienable rights and the blessings of life, liberty, and the

With the exception of that portion relating to officers, membership, etc., the following is the —

National Reform constitution.

"CONSTITUTION

OF THE

NATIONAL REFORM ASSOCIATION.

"Believing that Almighty God is the source of all power and authority in civil government, that the Lord Jesus Christ is the Ruler of Nations, and that the revealed Will of God is of Supreme authority in civil affairs;

"Remembering that this country was settled by Christian men, with Christian ends in view, and that they gave a distinctly Christian character to the institutions which they established;

"Perceiving the subtle and persevering attempts which are made to prohibit the reading of the Bible in our Public Schools, to overthrow our Sabbath laws, to corrupt the Family, to abolish the Oath, Prayer in our National and State Legislatures, Days of Fasting and Thanksgiving and other Christian features of our institutions, and so to divorce the American Government from all connection with the Christian religion;

"Viewing with grave apprehension the corruption of our politics, the legal sanction of the Liquor Traffic, and the disregard of moral and religious character in those who are exalted to high places in the nation;

"Believing that a written Constitution ought to contain explicit evidence of the Christian character and purpose of the nation which frames it, and perceiving that the silence of the Constitution of the United States in this respect is used as an argument against all that is Christian in the usage and administration of our Government;

"We, citizens of the United States, do associate ourselves under the following ARTICLES, and pledge ourselves to God and to one another, to labor, through wise and lawful means, for the ends herein set forth:

"ARTICLE I.

"This Society shall be called the 'NATIONAL REFORM ASSOCIATION.'

pursuit of happiness to ourselves, our posterity, and all the people, do ordain and establish this Constitution for the United States of America."

"ARTICLE II.

"The object of this Society shall be to maintain existing Christian features in the American Government, to promote needed reforms in the action of the government touching the Sabbath, the institution of the Family, the religious element in Education, the Oath, and Public Morality as affected by the liquor traffic and other kindred evils; and to secure such an amendment to the Constitution of the United States as will declare the nation's allegience to Jesus Christ and its acceptance of the moral laws of the Christian religion, and so indicate that this is a Christian nation, and place all the Christian laws, institutions and usages of our government on an undeniable legal basis in the fundamental law of the land." Object of association.

BASED UPON AN ERRONEOUS IDEA.

This association is based upon the entirely erroneous idea that because civil governments —"the powers that be"— are ordained of God, they are therefore religious, and have a right to legislate upon religious matters; and that Christianity, being the only true religion, and this country having been settled largely by Christian people, the national government should recognize the Christian religion as the national religion, and enforce Christian "institutions," particularly the Sunday institution, by law, and thus indicate that "this is a Christian nation." Based on wrong idea.

It is the same old theocratical theory of government adopted by Constantine and the church bishops of his time, which led to all the evils of church establishments in the Old World, and to all the religious persecutions and horrors of the Inquisition and the dark ages. As with the bishops in Constantine's time, the leaders in this movement fail to recognize the distinction so clearly drawn by Christ between things which belong to Cæsar and those which belong to God. The theocratical theory.

They wish a recognition of Deity and of Christianity in the national Constitution. Such a declaration will by no means make all the people in the nation religious. It will produce faith in no one, nor will it increase by a single individual the number of Christians in the nation. Nor will it give any guarantee or assurance that the rights and liberties of the people under it will be respected. The rather may it be taken as a signal for oppression. Thus far the Constitution of the United States has contained no such declaration, and yet it has been a charter of liberty. The Constitution of the Southern Confederacy, which was organized to perpetuate human slavery, contained such a declaration. Its preamble read as follows: Religious declaration will not make people religious.

Preamble to constitution of the Southern Confederacy.

"We, the people of the Confederate States, each State acting in its sovereign and independent character, in order to form a permanent federal government, establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity — *invoking the favour and guidance of Almighty God* — do ordain and establish the Constitution for the Confederate States of America." McPherson's "History of the Rebellion," page 98.

But we are told that without some legal recognition of religion a nation cannot endure. The government of the United States has recognized no religion. On the contrary it has by direct constitutional provision declared that "*Congress shall make no law respecting an establishment of religion,* or prohibiting the free exercise thereof;" and yet it has stood for a century and a quarter. The Constitution of the Southern Confederacy had a direct recognition of God in its Constitution, and it went down in less than five years. This shows that such declarations do little toward preserving national governments. As foundations for laws of injustice, intolerance, and oppression they may do much to weaken such governments, and hasten their downfall and dissolution. Let governmental recognition of religion once be established, and there will always be religious organizations ready to take advantage of it, and turn the power and influence of the government to their own ends and aggrandizement. Such has been the history of religion allied with civil government from the remotest ages.

Not a guarantee for perpetuity of government.

Great impetus given by court decision of 1892.

A great impetus was given to the movement by the decision of the Supreme Court of the United States, February 29, 1892, in which the declaration was made that this is "a Christian nation" (see page 487); also by the passage of the Sunday-closing condition to the appropriation made in Congress in July of the same year, to the Chicago Columbian Exposition of 1893. See page 370. And its leaders have been still further encouraged during more recent years by the introduction in Congress of numerous Sunday-law bills, and by proposed religious amendments to the Constitution, such as the one to preface the preamble to the Constitution with the words, "In the name of God." See pages 401-408.

WHY A NATIONAL SUNDAY LAW IS WANTED.

Why national Sunday legislation desired.

They wish every State and Territory in the United States to have a Sunday law, and that Sunday observance shall be strictly enforced by law. Especially do they wish the national government committed to Sunday legislation and Sunday enforcement. And the reasons for this they have plainly stated in their official organ. In 1889, when the Blair Sunday-rest bill was before Congress, they said:

To make State laws effective.

"The national law is needed to make the State laws complete and effective." "Christian Statesman," April 11, 1889.

Twenty-one years later, they say again:

"Washington and the District of Columbia have no Sunday law. . . . The value of such a law would lie not only in the relief which it would bring to many who are now deprived of their weekly rest, but in the support which it would lend to the cause of our national Christianity." "Christian Statesman," April, 1910.

Give support to national religion.

These statements reveal the real reason why a national Sunday law is wanted. It is to make *effective* the *State* Sunday laws, and to give *support* to a *national religion.*

LOGICAL EFFECT OF A RELIGIOUS AMENDMENT.

At a hearing given representatives of this association by a subcommittee of the House Judiciary Committee, April 12, 1910, on the Sheppard ("In the name of God") proposed amendment, they said: "Excellent as Mr. Sheppard's amendment is, it does not go far enough." They wished, they said, an amendment which would "fully and unmistakably" indicate that this is a "*Christian* nation."

A Christian amendment desired.

When asked by Mr. Sheppard what attitude the Jew would take toward such an amendment, they replied that "the Jew himself must answer that," but added:

"Whatever might be the Jew's attitude, we must all keep in mind that this is not a Jewish nation, and that a nation two-thirds of whose citizens are Christians or in sympathy with the Christian religion could not be expected to be governed by the wishes of the Jews, who are in the great minority, if these wishes are adverse to that which is essential to the nation's life and welfare." "Christian Statesman," May, 1910.

Not a Jewish nation.

Majority must rule.

The report in the "Statesman" further says: "Other questions were raised as to the attitude of the Universalists, Unitarians, and Seventh-day Adventists toward such an amendment," and asserts that "answers similar to the above" were given, all of which most plainly indicates that, while strongly denying that there is in their proposition "any sectarianism or anything that would violate either the letter or the spirit of that part of the first amendment to the Constitution which states that 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof,'" if their program ever carries, the rights of conscience, not only of Jews, but of *Christians* as well, will be disregarded and trampled upon, and the religious views of the majority only respected. But majority rule by law in religious things is all any one ever asked in the palmiest days of religious establishments and unions of church and state.

No quarter for sects not in harmony with majority.

At the hearing referred to, Rev. J. S. Martin, general superintendent of the association, stated that its purpose was "to develop, perfect, and *thoroughly establish* our *national Christianity.*" Nothing further need be added to show that they desire an *established religion* in this country, and that their ideas of civil government are thoroughly unconstitutional, un-American, and unchristian.

Desire an established religion.

WHAT CONGRESS HAS THOUGHT OF SUCH PROPOSALS.

February 18, 1874, the House Judiciary Committee submitted the following report to Congress, which was adopted:

View of Congress in 1874.

"The Committee on the Judiciary, to whom was referred the petition of E. G. Goulet and others, asking Congress for 'an acknowledgment of Almighty God and the Christian religion' in the Constitution of the United States, having considered the matter referred to them, respectfully pray leave to report:

"That, upon examination even of the meager debates by the fathers of the Republic in the convention which framed the Constitution, they find that the subject of this memorial was most fully and carefully considered, and then, in that convention, decided, after grave deliberation, to which the subject was entitled, that, as this country, the foundation of whose government they were then laying, was to be the home of the oppressed of all nations of the earth, whether Christian or Pagan, and in full realization of the dangers which the union between church and state had imposed upon so many nations in the Old World, with great unanimity that it was inexpedient to put anything into the Constitution or frame of government which might be construed to be a reference to any religious creed or doctrine.

"And they further find that this decision was accepted by our Christian fathers with such great unanimity that in the amendments which were afterward proposed, in order to make the Constitution more acceptable to the nation, none has ever been proposed to the States by which this wise determination of the fathers has been attempted to be changed. Wherefore, your committee report that it is inexpedient to legislate upon the subject of the above memorial, and ask that they be discharged from the further consideration thereof, and that this report, together with the petition, be laid upon the table." "House Reports," volume i, 43d Congress, 1st Session, Report No. 143.

A FALSE ASSURANCE.

Many fail to see how Sunday laws can bring about a union of church and state, or result in persecution. Those who think that they will, have been told by members of Congress even that they are "unnecessarily alarmed," and "frightened at shadows."

Persecution predicted.

Many years ago, when the views of the National Reform Association began to be propagated, wise students of the movement predicted that, if successful, it would result in persecution and oppression, particularly to conscientious observers of the seventh day. The National Reformers saw no danger in it, and said:

Assurance of no harmful results.

"From the beginning of the National Reform movement, they [Seventh-day Adventists] have regarded it as the first step toward the persecution which they, as observers of the seventh day, will endure when our Sabbath laws are revived and enforced. One can but smile at their apprehension of the success of a movement which would not harm a hair of their heads; but their fears were sin-

cere enough, for all that." "Christian Statesman," March, 1874.

The events of only a few years later, however, amply demonstrated that their fears were not only sincere but well-grounded. In eleven years, 1885-1896, under the revival of Sunday laws which then took place, over one hundred conscientious, God-fearing, Seventh-day Adventists in the United States, besides some thirty in foreign countries, were prosecuted for doing quiet work on Sunday, resulting in fines and costs amounting to $2,269.69, and imprisonment totaling 1,438 days, and 455 days served in the chain-gang. In at least fifteen States prosecutions of this kind have taken place. See Part VI.

Prosecution of Sabbatarians under Sunday-enforcement crusade.

SPIRIT OF THE MOVEMENT.

The intolerant spirit and real animus of this movement may be seen from the following utterances of leading National Reformers:

The intolerant spirit in the movement.

"You look for trouble in this land in the future, if these principles are applied. I think it will come to you if you maintain your present position. The foolhardy fellow who persists in standing on the railroad track, may well anticipate trouble when he hears the rumbling of the coming train." Rev. W. T. McConnel, in "open letter" to editors "American Sentinel," in "Christian Nation" of Dec. 14, 1887.

"Those who oppose this work now will discover, when the religious amendment is made to the Constitution, that if they do not see fit to fall in with the majority, they must abide the consequences, or seek some more congenial clime." Dr. David McAlister, in National Reform Convention at Lakeside, Ohio, August, 1887.

Submit, or leave the country.

"We might add, in all justice, If the opponents of the Bible do not like our government and its Christian features, let them go to some wild, desolate land, and in the name of the devil, and for the sake of the devil, subdue it, and set up a government of their own on infidel and atheistic ideas; and then if they can stand it, stay there till they die." Rev. E. B. Graham, in "Christian Statesman," May 21, 1885.

"We propose to incorporate in our national Constitution the moral and religious command, 'In it [the Sabbath] thou shalt do no work,' except the works of necessity, and by external force of sheriffs we propose to arrest and punish all violators of this law." Rev. M. A. Gault, in letter dated June 3, 1889.

Sunday observance to be strictly enforced.

"Let those who will, remember the Sabbath to keep it holy, from motives of love and obedience; the remnant must be made to do so through fear of law. We have no option." "Christian Nation," September 28, 1887.

"Give all men to understand that this is a Christian nation, and that, believing that without Christianity we perish, we must maintain by all means our Christian character. Inscribe this character on our Constitution. Enforce upon all who come among us the laws of Christian morality." "Christian Statesman," October 2, 1884.

Enforce upon all Christian laws.

"Uniformity is essential both to peace and progress. The opinion of the majority must be decisive. Even in the matter of men's consciences a degree of uniformity is necessity." Dr. S. F. Scovel, President of the Association, at Winona Lake, Indiana, August, 1910.

"We want state and religion; and we are going to have it. It shall be that so far as the affairs of the state require religion, it shall be religion, the religion of Jesus Christ." Jonathan Edwards, D. D., in National Reform Convention, New York City, Feb. 26, 27, 1873.

Congress must establish a standard of religion.

"Constitutional laws punish for false money, weights, and measure. So Congress must establish a standard of religion, or admit anything called religion." Prof. C. A. Blanchard, in Pittsburg Convention, in 1874.

Infidels would be disfranchised.

"To be perfectly plain, I believe that the existence of a Christian Constitution would disfranchise every logically consistent infidel." Rev. W. J. Coleman, in "Christian Statesman," November 1, 1883.

A SIGNIFICANT FACT.

In their efforts to establish a national religion and enforce Sunday observance by law, National Reformers have signified their willingness to unite with the strongest and most avowed advocates of a union of church and state. See pages 74-76. Thus:

"This common interest ought to strengthen both our determination to work and our readiness to co-operate with our Roman Catholic fellow-citizens. We may be subjected to some rebuffs in our first proffers, for the time has not yet come when the Roman Catholic Church will consent to strike hands with other churches — as such; but the time has come to make repeated advances, and gladly to accept co-operation in any form in which they may be willing to exhibit it." Dr. S. F. Scovel, in "Christian Statesman," Aug. 31, 1884.

"Whenever they are willing to co-operate in resisting the progress of political atheism, we will gladly join hands with them." "Christian Statesman," December 11, 1884.

The National Reformers would do away with the first part of the first amendment to the Constitution. The American Federation of Catholic Societies, in November, 1910, at New Orleans, passed a resolution urging Congress to so amend the postal laws as to exclude from the mails "books, papers, writings, and prints which outrage religious convictions, and contain scurrilous and slanderous attacks upon the faith." Philadelphia "Ledger," November 17, 1910. This would practically do away with the rest of the amendment, and freedom of religion and the press here would be a thing of the past.

From the facts here set forth, it is plain to be seen that the success of this movement will mean the downfall of this nation as a defender of religious liberty and an asylum for the oppressed. It will mean the repudiation of the American principle of separation of church and state, and a turning back to the old order of things — national apostasy and national ruin!

PROPOSED CONSTITUTIONAL AMENDMENT, BY HON. JAMES G. BLAINE.

Dec. 14, 1875.

States forbidden to interfere with free exercise of religion.

State money not to be put to religious uses.

No State shall make any law respecting an establishment of religion, or prohibiting the free exercise thereof; and no money raised by school taxation in any State, for the support of public schools, or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect; nor shall any money so raised, or lands so devoted, be divided between religious sects or denominations.[1]

The Blaine amendment.

[1] December 14, 1875, the Hon. James G. Blaine proposed the above amendment to the Constitution. It was not acted upon, however, until August 14, 1876, when it was passed with the almost unanimous vote of "Yeas, 180," to "Nays, 7." In the House, the Judiciary Committee added the words, "This article shall not vest, enlarge, or diminish legislative power in Congress." In the Senate, it was further amended, but failed to secure the necessary two-thirds vote, the vote standing, "Yeas, 28," to "Nays, 16." Both of the great political parties that year inserted in their platforms declarations on the subject of religious freedom, the Democratic party declaring: "We do here re-affirm . . . our faith in the total separation of church and state, for the sake alike of civil and religious freedom."

Its favorable reception.

This was a proposition to prohibit the States doing what the Constitution, by its first amendment, forbids the national government doing. Instead of "Congress shall make no law," etc., this said, "No *State* shall make any law respecting an establishment of religion," etc. The idea was to make the application of the principle of separation of church and state here complete. The adoption of this amendment would have rendered unconstitutional every State Sunday law in the United States. While the original States composing the Union, in doing away with their religious establishments as such, followed the principle adopted by the national government, nearly all, if not all, still retained that which was the real germ and taproot of those establishments — their Sunday laws. This amendment would have done away with these and all other forms of state patronage and support to religion. The amendment should have been adopted. Since then the tide has set in the other way, as witnessed in the great revival of Sunday legislation throughout the States, hundreds of thousands of dollars contributed by the government to schools under sectarian control, and Congress besieged with petitions and bills for Sunday legislation and a religious amendment to the Constitution.

The principle extended to the States.

Would have done away with Sunday laws.

Feb. 8, 1883.

REPEAL OF CALIFORNIA SUNDAY LAW.

TWENTY-FIFTH SESSION OF THE LEGISLATURE, 1883.

AN ACT TO REPEAL SECTIONS TWO HUNDRED AND NINETY-NINE, THREE HUNDRED, AND THREE HUNDRED AND ONE OF AN ACT ENTITLED "AN ACT TO ESTABLISH A PENAL CODE," APPROVED FEBRUARY 14, 1872, RELATING TO SUNDAY AMUSEMENTS WHERE LIQUORS ARE SOLD, AND KEEPING OPEN PLACES OF BUSINESS ON SUNDAY.[1]

[Approved February 8, 1883.]

The people of the State of California, represented in Senate and Assembly, do enact as follows:

The repealing act.

SECTION 1. Sections two hundred and ninety-nine, three hundred, and three hundred and one of the Penal Code are hereby repealed.

SECTION 2. This Act shall take effect from and after its passage.[2]

Second act of session.

[1] "Statutes of California," twenty-fifth session, page 1. Almost the first thing the Legislature did at this session was to repeal the Sunday law of the State. In fact this was the second act passed at the session.

History of Sunday legislation in California.

[2] The history of Sunday legislation in California is a most interesting one. For six years after becoming a State, California got along without a Sunday law. In 1855 the first law of this character in the State was enacted, a law prohibiting "all barbarous and noisy amusements on the Christian Sabbath." In 1858 another law was enacted, entitled "An act to provide for the better observance of the Sabbath." This forbade keeping open any store, work-shop, or business house, and the sale of all goods, on "the Christian Sabbath," under a penalty of fifty dollars, or in default, imprisonment not to exceed one day for each two dollars' fine and costs. The same year, a case, that of *ex parte* Newman, an Israelite engaged in the business of selling clothing at Sacramento, was carried to the Supreme Court of the State under this law, the court declaring the law in violation of sections one and four of the State Bill of Rights, and therefore unconstitutional. Justice Stephen J. Field, one of the three members of the court, and later a member of the Supreme Court of the United States,

Law of 1858 declared unconstitutional.

wrote a lengthy dissenting opinion to this decision, in which he upheld Sunday laws upon the ground that "Christianity is the prevailing faith of our people, . . . the basis of our civilization," and that it was as natural that its spirit should "infuse itself into and humanize our laws" as that "the national sentiment of liberty should find expression in the legislation of the country," at the same time denying that Sunday laws are religious, or, to his perception, in conflict with the constitutional provisions guaranteeing the right to acquire property and "the free exercise and enjoyment of religious profession and worship, without discrimination or preference." Opposed to this view, Chief Justice Terry, who wrote the prevailing opinion of the court, said: "The enforced observance of a day held sacred by one of the sects, is a discrimination in favor of that sect, and a violation of the freedom of the others. . . . Considered as a municipal regulation, the Legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week, any more than it can forbid it altogether." 9 California, 502. For the full decision and further comments on this, see page 434, and notes on the "Christian Nation" decision, pages 487-513.

Justice Field's dissenting opinion.

Chief Justice Terry's views.

In 1861 the Legislature enacted another law "for the observance of the Sabbath," similar to the law of 1858. In the same year another case, that of *ex parte* Andrews, 18 California, 678, was carried to the Supreme Court of the State under this law, and the former decision was reversed, Justice Field's dissenting opinion in the former case now being approved, and the law therefore being sustained. Justice Field had now become Chief Justice.

Law of 1861 upheld.

In 1880 a law making the baking of bread from 6 P. M. Saturday till 6 P. M. Sunday unlawful, was passed "to regulate and provide for a day of rest in certain cases." In the same year this law in the case of *ex parte* Westerfield, 55 California, 550, was declared unconstitutional by the State Supreme Court, on the ground of its being class legislation, and therefore in conflict with section 25 of the State Bill of Rights.

Law of 1880 set aside.

In 1882 the question of enforcing the State Sunday law — a combination, under various amendments and codifications, of the laws of 1855 and 1861 — was widely agitated throughout the State, and became a political issue. An attempt was made to enforce the law. Hundreds were arrested, among these being one of the most prominent Sabbatarians in the West, the manager of the Pacific Press Publishing House, the largest publishing house on the Pacific Coast; the courts were flooded with cases of prosecutions; every one prosecuted demanded a jury trial; the juries would not convict; and the law proved itself obnoxious and a dead letter. Both the leading political parties inserted planks in their platforms (the fifth in each) respecting the law, the Democrats demanding its repeal, the Republicans its retention. The daily papers discussed the question pro and

Campaign of 1882.

con. The San Francisco "Daily Examiner" of September 1, 1882, said: "The law is inoperative, and its repeal would only lop off a dead branch from the tree of legislation. Sunday would remain just what it is now." Judge D. O. Shattuck said the anti-Sunday-law plank in the Democratic platform should be withdrawn, or made "the important question of the campaign," and added: "It raises the most important question that has ever been submitted for our decision, to wit: Shall we repeal or ignore one of the ten commandments of God?" San Francisco "Morning Call," August 27, 1882. The church people took up the fight, and ministerial associations passed strong resolutions in favor of the law. The Methodist Conference of California, in session at San Francisco, September 26, 1882, Bishop Hurst presiding, passed a resolution stating that "any attempt to abolish or change the day is an attempt to destroy the national life; that the civil sabbath in the republican state depends upon the ballots of the citizens; that it is the duty of the Christian citizen to cast his free ballot where it will best promote the highest interests of the Christian Sabbath." San Francisco "Morning Call," September 27, 1882.

Law inoperative.

The issue of the campaign.

Church people instructed how to vote.

While previously the State had always been strongly Republican, the result of this campaign was a sweeping Democratic majority. In 1879 the Republican majority was 20,319. In 1882 the Democratic majority, according to the "Daily Examiner," of November 11, was 21,050. Logically and very naturally, therefore, at the governor's recommendation, the next Legislature, which convened early in 1883, repealed the State Sunday law, this being the second act passed at the session; since which time California has been without a Sunday law.

Sweeping Democratic majority.

Ten years later the religious element pushed matters until they secured a one-day-in-seven rest law, not a Sunday law, which, however, like the previous Sunday laws, has proved a dead letter. This law, approved February 27, 1893, reads as follows:

One-day-in-seven law.

"SECTION 1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven, and it shall be unlawful for any employer of labor to cause his employees, or any of them, to work more than six days in seven; provided, however, that the provisions of this section shall not apply to any case of emergency.

"SECTION 2. For the purposes of this act, the term 'day's rest' shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or night time.

"SECTION 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

"SECTION 4. This act shall take effect and be in force thirty days from and after its passage." Statutes '93, p. 54; Penal Code, p. 722.

But, while providing for one day's rest in seven for all employees, this law has not satisfied the Sunday-law advocates. They wish a *Sunday* law. During recent years the most determined efforts have

Not satisfactory to Sunday-law advocates.

been made on the part of certain religious elements and so-called "reformers," to bring California back into the fold of the Sunday-law-ridden States, going so far even as to demand a Sunday-law amendment to the State Constitution. Although having demonstrated that she has been able to get along for thirty-three of her sixty-two years' experience as a State without a Sunday law, these modern "reformers" with mediæval notions are determined that she shall have a Sunday law. Her argument against the need of such laws is bad for their contention.

A Sunday law wanted.

As a sample of the persistence with which those bent on fastening religious legislation upon this nation pursue their work, note the following: No sooner had the desire of California to secure the exposition to be held in 1915, upon the completion of the Panama Canal, been made known, than a plan was set on foot by Dr. W. F. Crafts, to bring pressure to bear upon Congress, through a strong church and ministerial combination in California, to condition the assignment of the exposition to California upon the enactment of a State Sunday law, upon the ground that an exposition held in a State without such a law would not properly represent our national Christianity.

Sample of church and state persistency.

That Sabbath legislation is not necessary in California or anywhere else to produce good Sabbath-keeping, is evident from the fact that one hundred thousand Seventh-day Adventists throughout the country, many of whom live in California, observe the seventh day without a law compelling others to do so; and that Sunday is observed as well in California without a Sunday law as in other States with such a law, note the following: "A San Francisco pastor gives a like answer to the question, 'Where have you seen the best Sabbath observance?' 'Among the Christian people of California.'" "The Sabbath for Man," by Rev. Wilbur F. Crafts, page 95.

Sabbath legislation demonstrated unnecessary.

After calling attention to the fact that all the States in the Union except California have Sunday laws, the "Survey" of New York, for December 3, 1910, says:

"In spite of this legislation, Sunday labor exists practically throughout the Union in blast furnaces, iron and steel works, telegraph and telephone lines, heat, light, and power plants, newspapers, hotels, and restaurants, and on railroads and street railways. . . . The Sunday laws, then, have failed of both their religious and their hygienic purpose, and some other and more practical law must take their place."

Sunday laws a failure.

The only legitimate or practicable Sabbath law is the law of God, backed by the law of conscientious obedience to that law.

If the people of California are wise, they will refuse to acquiesce in this retrogressional movement, and stand for their rights, their liberties, and their freedom as guaranteed by their Constitution, the preamble of which says, "We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution."

Freedom object of Constitution.

February, 1887.

SPEECH OF SENATOR CROCKETT.[1]

IN THE SENATE OF THE STATE OF ARKANSAS.

Repeal of exemption clause.

Sir, I take shame to myself as a member of the General Assembly of 1885, which repealed the act of religious protection which this bill is intended to restore. It was hasty and ill-advised legislation, and, like all such, has been only productive of oppressive persecution upon many of our best citizens, and of shame to the fair fame of our young and glorious State.

Infamous wrongs committed.

Wrong in conception, it has proved infamous in execution, and under it such ill deeds and foul oppressions have been perpetrated upon an inoffensive class of free American citizens in Arkansas, for conscience' sake, as should mantle the cheek of every lover of his State and country with indignant shame.

Guarantees of Constitution.

For nearly half a century, the laws of our State, constitutional and statutory, were in accord with our national Constitution, in guaranteeing to every citizen the right to worship God in the manner prescribed by his own conscience, and that alone. The noble patriots who framed our nation's fundamental law, with the wisdom taught by the history of disastrous results in other nations from joining church and state, and fully alive to so great a danger to our republican institutions and their perpetuity, so wisely constructed that safeguard of our American liberties, that for forty years after its ratification there was no effort

Equal protection to all.

to interfere with its grand principle of equal protection to all, in the full enjoyment and exercise of their religious convictions. Then petitions began to pour

[1] A speech by Senator Robert H. Crockett, grandson of Hon. David Crockett, in behalf of a bill introduced into the Legislature, granting immunity to Sabbatarians from the penalties inflicted for working upon Sunday. See "Weekly Arkansas Gazette," February 10, 1887.

in from the New England States upon the United States Senate "to prevent the carrying and delivery of the mails upon Sunday" — which they declared was set aside by "divine authority as a day to be kept holy."

Attempt to modify American institutions.

The petitions were referred to the committee on postal matters, and the report was made by Hon. Richard M. Johnson, one of the fathers of the Democratic party. I quote the following from that report,[1] which was adopted unanimously, and "committee discharged:"

Petitions referred.

"Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for violation of what government denominated the law of God. To prevent a similar train of evils in this country, the Constitution has withheld the power of defining the divine law. It is a right reserved to each citizen. And while he respects the rights of others, he cannot be held amenable to any human tribunal for his conclusions. . . . The obligation of the government is the same on both these classes [Sabbatarians and Sunday-keepers]; and the committee can discover no principle on which the claims of one should be more respected than those of the other, unless it be admitted that the consciences of the minority are less sacred than those of the majority."

Religious persecutions of the past.

Interference in religion, unconstitutional.

All equal before the law.

Listen to that last sentence — but again I quote:

"What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights, of which government cannot deprive any of its citizens, however small. Despotic power may invade these rights, but justice still confirms them."

American principle is rights — not merely toleration.

Rights inalienable.

And again:

1 For this report in full, see *ante* page 233 *et seq.*

A single religious decision unconstitutional.

"Let the national Legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid, for the usurpation of the divine prerogative in this country, which has been the desolating scourge to the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion, for enforcing religious observances."

Force in religious matters un-American.

Sir, it was my privilege during the last two years to travel through our north-western States in the interest of immigration. I delivered public lectures upon the material resources of Arkansas, and the inducements held out by her to those who desired homes in a new State. I told them of her cloudless skies and tropical climes, and bird songs as sweet as vesper chimes. I told them of her mountains and valleys, of her forests of valuable timber, her thousands of miles of navigable waters, her gushing springs, her broad, flower-decked and grass-carpeted prairies, sleeping in the golden sunshine of unsettled solitude. I told them, sir, of the rich stores of mineral wealth sleeping in the sunless depths of her bosom. I told them of our God-inspired liquor laws, of our "pistol laws," of our exemption laws, and oh, sir! — God forgive me the lie — I told them that our Constitution and laws protected all men equally in the enjoyment and exercise of their religious convictions. I told them that the sectional feeling engendered by the war was a thing of the past, and that her citizens, through me, cordially invited them to come and share this glorious land with us, and aid us to develop it.

Resources of Arkansas.

Immigration.

Many came and settled up our wild lands and prairies, and where but a few years ago were heard in the stillness of the night the howl of the wolf, the scream of the panther, and the wail of the wildcat, these people for whom I am pleading, came and

settled ; — and behold the change ! Instead of the savage sounds incident to the wilderness, now are heard the tap, tap, tap, of the mechanic's hammer, the rattle and roar of the railroad, the busy hum of industry, and softer, sweeter far than all these, is heard the music of the church bells as they ring in silvery chimes across the prairies and valleys, and are echoed back from the hill-sides throughout the borders of our whole State.

Prosperity of State.

These people are, many of them, Seventh-day Adventists and Seventh-day Baptists. They are people who religiously and conscientiously keep Saturday, the seventh day, as the Sabbath, in accordance with the fourth commandment. They find no authority in the Scripture for keeping Sunday, the first day of the week, nor can any one else. All commentators agree that Saturday is and was the scriptural Sabbath, and that the keeping of Sunday, the first day of the week, as the Sabbath, is of human origin, and not by divine injunction. The Catholic writers and all theologians agree in this.

Many immigrants Sabbatarians.

These people understand the decalogue to be fully as binding upon them to-day as when handed down amid the thunders of Sinai. They do not feel at liberty to abstain from their usual avocations, because they read the commandment, "Six days shalt thou labor," as mandatory, and they believe that they have no more right to abstain from labor on the first day of the week than they have to neglect the observance of Saturday as their Sabbath. They agree with their Christian brethren of other denominations in all essential points of doctrine, the one great difference being upon the day to be kept as the Sabbath. They follow no avocations tending to demoralize the community in which they live. They came among us expecting the same protection in the exercise of their religious faith as is accorded to them

Moral law still considered binding.

Characteristic of Sabbatarians.

in all the States of Europe, in South Africa, Australia, the Sandwich Islands, and every State in the Union except, alas! that I should say it, Arkansas! Sir, under the existing law, there have been in Arkansas, within the last two years, three times as many cases of persecution for conscience' sake[1] as there have been in all the other States combined since the adoption of our national Constitution.

Persecution in Arkansas.

Let me, sir, illustrate the operation of the present law by one or two examples. A Mr. Swearingen came from a Northern State and settled a farm in Benton county. His farm was four miles from town, and far away from any house of religious worship. He was a member of the Seventh-day Adventist Church, and after having sacredly observed the Sabbath of his people (Saturday) by abstaining from all secular work, he and his son, a lad of seventeen, on the first day of the week went quietly about their usual avocations. They disturbed no one — interfered with the rights of no one. But they were

Operations of Sunday laws.

[1] For a summary of many of these cases, see pages 654-730.

Similar outrages have since been perpetrated in Tennessee and elsewhere. The truth is that religious persecution goes hand in hand with religious legislation. During recent years, since the Sunday-law agitation has been revived, over one hundred conscientious Sabbatarians have been prosecuted in the United States, seventeen States being involved — Alabama, California, Georgia, Maryland, Michigan, North Carolina, South Carolina, Pennsylvania, Arkansas, Florida, Illinois, Massachusetts, Mississippi, Ohio, Tennessee, Virginia, and Texas.

Prosecutions in various States.

In the Nashville "Daily American" of October 19, 1886, we read: "The readers of the 'American' are aware that three of the members of the Seventh-day Adventists are lying in jail at Paris [Tennessee], for carrying out the principles of their faith concerning the Sabbath of the decalogue." Two of these Christians contracted a fever from the filthy, sickening cells, and on account of this they were released under promise of returning when they recovered. One of them, in order to have paid his fine and costs in jail, at the rate fixed by law, would have been confined two hundred eighty days, or over three fourths of a year; and all this simply because he acted contrary to the religious belief of some one else! In a Georgia jail a Sabbatarian contracted a fever from which he died.

Tennessee Adventists in jail.

observed, and reported to the grand jury — indicted, arrested, tried, convicted, fined; and having no money to pay the fine, these moral Christian citizens of Arkansas were dragged to the county jail and imprisoned like felons for twenty-five days — and for what? For daring in this so-called land of liberty, in the year of our Lord 1887, to worship God!

Adventists fined and sent to jail.

Christians imprisoned like felons.

Was this the end of the story? Alas, no, sir! They were turned out; and the old man's only horse, his sole reliance to make bread for his children, was levied on to pay the fine and costs, amounting to thirty-eight dollars. The horse sold at auction for twenty-seven dollars. A few days afterward the sheriff came again, and demanded thirty-six dollars, — eleven dollars balance due on fine and costs, and twenty-five dollars for board for himself and son while in jail. And when the poor old man — a Christian, mind you — told him with tears that he had no money, he promptly levied on his only cow, but was persuaded to accept bond, and the amount was paid by contributions from his friends of the same faith. Sir, my heart swells to bursting with indignation as I repeat to you the infamous story.

Old man's horse sold.

His only cow levied on.

Helped by friends.

. . . . . .

On next Monday, at Malvern, six as honest, good, and virtuous citizens as live in Arkansas are to be tried as criminals for daring to worship God in accordance with the dictates of their own consciences, for exercising a right which this government, under the Constitution, has no power to abridge. Sir, I plead, in the name of justice, in the name of our republican institutions, in the name of these inoffensive, God-fearing, God-serving people, our fellow-citizens, and last, sir, in the name of Arkansas, I plead that this bill may pass, and this one foul blot be wiped from the escutcheon of our glorious commonwealth.

Continuation of prosecution.

Plea for Sabbatarians.

May 21, 1888.

NATIONAL SUNDAY-REST BILL.[1]

SENATE BILL NO. 2983, INTRODUCED IN FIRST SESSION OF FIFTIETH CONGRESS, BY SENATOR H. W. BLAIR, MAY 21, 1888.

Title — to promote day of religious worship.

BILL TO SECURE TO THE PEOPLE THE ENJOYMENT OF THE FIRST DAY OF THE WEEK, COMMONLY KNOWN AS THE LORD'S DAY, AS A DAY OF REST, AND TO PROMOTE ITS OBSERVANCE AS A DAY OF RELIGIOUS WORSHIP.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That no person or corporation, or the agent, servant, or employee of any person or corporation, shall perform or authorize to be performed, any secular work, labor, or business, to the disturbance of others, works of necessity, mercy, and humanity excepted; nor shall any person engage in any play, game, or amusement, or recreation, to the disturbance of others, on the first day of the week, commonly known as the Lord's day, or during any part thereof, in any

Secular work prohibited.

[1] For nearly sixty years the question of Sunday legislation received no attention in Congress, the famous and unanswerable Sunday Mail Reports of 1829 and 1830, prepared by Col. Richard M. Johnson, having put the matter at rest for this time. But with the introduction of the National Sunday-rest bill by Senator Blair, of New Hampshire, in 1888, the question was again revived, and for a number of years this and other similar measures before Congress were discussed and widely agitated throughout the country.

Revival after sixty years of quiet.

A notable hearing was held on this bill before the Senate Committee on Education and Labor, of which Mr. Blair was chairman, December 13, 1888, in which the merits of the bill and the principles underlying it were argued at length and vigorously contested. Its unconstitutionality was noted, and the history of Sunday legislation brought to bear upon the issue. Petitions for and against the measure were widely circulated. The measure, however, got no further than committee.

A notable hearing.

territory, district, vessel, or place, subject to the exclusive jurisdiction of the United States; nor shall it be lawful for any person or corporation to receive pay for labor or service performed or rendered in violation of this section.

SECTION 2. That no mails or mail matter shall hereafter be transported in time of peace over any land postal route, nor shall any mail matter be collected, assorted, handled, or delivered during any part of the first day of the week: *Provided,* That

Mails not to be handled on Sunday except in cases of necessity and mercy.

Early in the first session of the fifty-first Congress, December 9, 1889, Senator Blair re-introduced his Sunday bill, but stripped largely of its religious terminology, and with an exemption added to the last section, section 6, in favor of observers of another day. The title to the bill was changed to read:

Bill re-introduced stripped of religious caste.

"A bill to secure to the people the privilege of rest and of religious worship, free from disturbance by others, on the first day of the week."

Changed title.

The exemption in section 6 read as follows:

"Nor shall the provisions of this act be construed to prohibit or to sanction labor on Sunday by individuals who conscientiously believe in and observe any other day than Sunday as the Sabbath or a day of religious worship, provided such labor be not done to the disturbance of others."

Observers of another day exempted.

Soon after its re-introduction, the Litchfield (Minnesota) "Independent" commented upon the matter thus:

"Senator Blair has, since the present session of Congress opened, re-introduced his famous Sunday-rest bill. He has changed the title and made other modifications in the bill to disarm opposition. One of the most important is a sop thrown to the Seventh-day Adventists in a proviso exempting them from the operations of the bill. Notwithstanding these disguises and concessions the spirit of the bill remains the same. The principle is wholly, radically, and fundamentally wrong, and it matters little how the act is doctored and tinkered to satisfy this or that element of opposition. We hope Congress will sit squarely down on it." Quoted in "American Sentinel," March 3, 1890.

Changes made to disarm opposition.

But although divested thus of its glaringly religious character, and exempting observers of another day, the measure again failed to carry, the exemption itself testifying to the fact that the proposed legislation entered the realm of conscience and the field of religious controversy. The bill died with the fifty-first Congress.

Again failed.

whenever any letter shall relate to work of necessity or mercy, or shall concern the health, life, or decease of any person, and the fact shall be plainly stated upon the face of the envelope containing the same, the Postmaster-General shall provide for the transportation of such letter or letters in packages separate from other mail matter, and shall make regulations for the delivery thereof, the same having been received at its place of destination before the said first day of the week, during such limited portion of the day as shall best suit the public convenience and least interfere with the due observance of the day as one of worship and rest: *And provided further,* That when there shall have been an interruption in the due and regular transmission of the mails, it shall be lawful to so far examine the same when delivered as to ascertain if there be such matter therein for lawful delivery on the first day of the week.

Due observance of day as day of worship guarded.

SECTION 3. That the prosecution of commerce between the States and with the Indian tribes, the same not being work of necessity, mercy, nor humanity, by the transportation of persons or property by land or water in such way as to interfere with or disturb the people in the enjoyment of the first day of the week, or any portion thereof, as a day of rest from labor, the same not being labor of necessity, mercy, or humanity, or its observance as a day of religious worship, is hereby prohibited; and any person or corporation, or the agent or employee of any person or corporation, who shall willfully violate this section, shall be punished by a fine of not less than ten nor more than one thousand dollars; and no service performed in the prosecution of such prohibited commerce shall be lawful, nor shall any compensation be recoverable or be paid for the same.

Interstate commerce prohibited.

Day of religious worship.

SECTION 4. That all military and naval drills, musters, and parades, not in time of active service or im-

mediate preparation therefor, of soldiers, sailors, marines, or cadets of the United States, on the first day of the week, except assemblies for the due and orderly observance of religious worship, are hereby prohibited, nor shall any unnecessary labor be performed or permitted in the military or naval service of the United States on the Lord's day.

Only religious worship permitted in army and navy on Sunday.

SECTION 5. That it shall be unlawful to pay or to receive payment or wages in any manner for service rendered, or for labor performed, or for the transportation of persons or of property in violation of the provisions of this act, nor shall any action lie for the recovery thereof; and when so paid, whether in advance or otherwise, the same may be recovered back by whoever shall first sue for the same.

Payment on Sunday or for Sunday work unlawful.

SECTION 6. That labor or service performed and rendered on the first day of the week in consequence of accident, disaster, or unavoidable delays in making the regular connections upon postal routes and routes of travel and transportation, the preservation of perishable and exposed property, and the regular and necessary transportation and delivery of articles of food in condition for healthy use, and such transportation for short distances from one State, District, or Territory, into another State, District, or Territory, as by local laws shall be declared to be necessary for the public good, shall not be deemed violations of this act, but the same shall be construed, so far as possible, to secure to the whole people rest from toil during the first day of the week, their mental and moral culture and the religious observance of the Sabbath day.[1]

What works permissible on Sunday.

Securing Sunday as day of rest and worship object of bill.

[1] As with its title, this last expression was a "dead give away" of the measure and the whole movement demanding its enactment. The act was to be so "construed" as to secure to the people "the *religious observance* of the *Sabbath* day." When the bill was re-introduced, this expression was omitted, and in its place the "sop" exempting "conscientious" observers of another day inserted.

A give-away clause.

May 25, 1888.

PROPOSED RELIGIOUS EDUCATIONAL AMENDMENT.[1]

SENATE RESOLUTION 86, INTRODUCED IN THE FIRST SESSION OF FIFTIETH CONGRESS, BY SENATOR H. W. BLAIR, MAY 25, 1888.

Joint resolution.

JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES RESPECTING ESTABLISHMENTS OF RELIGION AND FREE PUBLIC SCHOOLS.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two thirds of each House concurring therein), That the following amendment to the Constitution of the United States be, and hereby is, proposed to the States, to become valid when ratified by the Legislatures of three fourths of the States, as provided in the Constitution:

ARTICLE

First amendment idea extended to States.

SECTION 1. No State shall ever make or maintain any law respecting an establishment of religion, or prohibiting the free exercise thereof.

The prohibition of section 1 directly violated.

SECTION 2. Each State in this Union shall establish and maintain a system of free public schools, adequate for the education of all the children living therein, between the ages of six and sixteen years inclusive, in the common branches of knowledge, and in virtue, morality, and the principles of the Christian religion.

A twin measure to Sunday bill.

[1] Only four days after introducing his famous Sunday-rest bill, Senator Blair introduced into the Senate of the United States this proposed religious educational amendment to the Constitution. Like the Sunday bill itself, this was a proposition to undo the work of the founders of this government in separating religion from civil government, and make it a subject of state concern and control,— an attempt to establish the Christian religion as the legal and legally rec-

But no money raised by taxation imposed by law, or any money or other property or credit belonging to any municipal organization, or to any State, or to the United States, shall ever be appropriated, applied, or given to the use or purpose of any school, institution, corporation, or person, whereby instruction or training shall be given in the doctrines, tenets, belief, ceremonials, or observances peculiar to any sect, denomination, organization, or society, being or claiming to be, religious in its character, or such peculiar doctrines, tenets, belief, ceremonials, or observances be taught or inculcated in the free public schools.

Sectarian teaching not to be supported.

SECTION 3. To the end that each State, the United States, and all the people thereof, may have and preserve governments republican in form and substance, the United States shall guarantee to every State, to the people of every State and of the United States,

National government to stand back of and maintain the system.

ognized religion of the nation. While apparently after the order of the amendment proposed by Senator Blaine in 1875 (see page 349), its real object was the very reverse.

Unlike Blaine amendment.

The incongruity of the measure is apparent. Section 2 provides that each State shall *do* what section 1 explicitly says they shall *not* do. The real import and inevitable logic of section 2 is that each State shall "establish" the "Christian religion;" not directly, but through its *school system*,— by teaching "the principles of the Christian religion" in its schools. And section 3 provides that this "system" shall have "the support and maintenance" of the "United States." This meant that the Constitution of the United States was to compel every State in the Union to establish a religion, and that the United States was then to see to it that this religion thus established was supported and maintained. It meant that the Constitution was going to compel every State to do what the first amendment to the Constitution explicitly forbids Congress doing, and that the national government would back them up in doing this.

States to establish the Christian religion.

That the idea in this was to establish the Christian religion as the religion of the nation, and this to the exclusion of all other religions, is further confirmed by the following communication of the author of the measure to the New York "Mail and Express," written about this time:

the support and maintenance of such a system of free public schools as is herein provided.

Laws to enforce.

SECTION 4. That Congress shall enforce this article by legislation when necessary.

Senator Blair's letter to New York "Mail and Express."

"I yet believe that instead of selecting a final toleration of so-called religions, the American people will, by constant and irresistible pressure, gradually expel from our geographical boundaries every religion except the Christian in its varied forms. I do not expect to see the pagan and other forms existing side by side with the former, both peaceably acquiesced in, for any length of time. I do not think that experience will satisfy the American people that the inculcation of any positive religious belief hostile to the Christian faith, or the practice of the forms of any other worship, is conducive to the good order of society and the general welfare. There may not be any exhibition of bigotry in this. I believe that religious toleration will yet come to be considered to be an intelligent discrimination between the true and the false, and the selection of the former by such universal consent as shall exclude by general reprobation the recognition and practice of the latter. . . . The people are considering these subjects anew. They are questioning whether there be not some mistake in theories of religious liberty, which permit the inculcation of the most destructive errors in the name of toleration, and the spread of pestilences under the name of liberty which despises the quarantine." Quoted in "American Sentinel," July 10, 1890.

Animus of bills exposed.

This communication to the official organ of the American Sabbath Union, the publisher of which, Col. Elliott F. Shepard, was then president of the union, casts no small sidelight upon the real character and animus of the two religious measures introduced by Senator Blair. It showed that while apparently pious and Christian, the spirit of religious bigotry, despotism, and intolerance was behind them, and ingrained in their very make-up.

Hearing on the measure.

A hearing on the proposed amendment was held before the Senate Committee on Education and Labor, of which Mr. Blair was chairman, February 15, 1889, at which a large number of ministers appeared and spoke in its favor, among them Rev. T. P. Stevenson, corresponding secretary of the National Reform Association. Another hearing on it was held February 22, many ministers again championing it, and two representatives of the Seventh-day Adventists, J. O. Corliss and A. T. Jones, opposing it. By the latter the position was taken that "to the family and the church, and to these alone, the Author of the Christian religion has committed the work of teaching that religion, and if these fail, the failure is complete."

Fate of resolution.

As with the Sunday-rest bill, this resolution died with the fifty-first Congress.

DISTRICT SUNDAY-REST BILL.

Jan. 6, 1890.

HOUSE BILL NO. 3854, INTRODUCED IN FIRST SESSION OF FIFTY-FIRST CONGRESS, BY HON. W. C. P. BRECKINRIDGE, JANUARY 6, 1890.

A BILL TO PREVENT PERSONS FROM BEING FORCED TO LABOR ON SUNDAY.[1]

Title of bill.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be unlawful for any person or corporation, or employee of any person or corporation in the District of Columbia, to perform any secular labor or business, or to cause the same to be

Labor prohibited.

[1] Following closely the re-introduction of the Blair Sunday-rest bill and the Blair Educational amendment into Congress (December 9, 1889), this bill for a Sunday law for the District of Columbia was introduced into the House. Its title, "A Bill to Prevent Persons from Being Forced to Labor on Sunday," was both a misnomer and misleading, for no one in the District was being "forced" to labor on Sunday, nor is there anything in the bill dealing with any such offense. Instead of being a bill to prevent persons from being forced to labor on Sunday, it was, in reality, a bill to force people to rest on Sunday. As with the Blair Sunday bill, not only the compulsory observance of a religious rest day but the exemption in favor of conscientious observers of another day, showed it to be religious, and therefore unconstitutional,— that it entered the sacred precincts of conscience, "the sanctuary of the soul;" and, as pointed out in the Sunday Mail Reports of 1829 and 1830, if enacted, would, in a manner, "constitute a legislative decision of a religious controversy, in which even Christians themselves are at issue." See pages 250, 237.

Title to bill a misnomer.

Religious and therefore unconstitutional.

At the hearing given on the measure February 18, 1890, the chief speakers favoring it, as at the hearing on the Blair bills, were ministers,— Rev. George Elliott, Rev. J. H. Elliott, and Rev. W. F. Crafts, — a representative of the Knights of Labor, Mr. H. J. Shulteis, and Mrs. Catlin, of the W. C. T. U., also favoring it. Opposing it were J. O. Corliss, A. T. Jones, and W. H. McKee, representatives of the Seventh-day Adventists, and Mr. Millard F. Hobbs, Master Workman of the District Knights of Labor.

Hearing Feb. 18, 1890.

performed by any person in their employment on Sunday, except works of necessity or mercy; nor shall it be lawful for any person or corporation to receive pay for labor or services performed or rendered in violation of this act.

Fine $100.

Any person or corporation, or employee of any person or corporation in the District of Columbia, who shall violate the provisions of this act, shall, upon conviction thereof, be punished by a fine of not more

Speaking upon the title of the bill, Mr. Corliss said:

No one forced to labor on Sunday.

"No one in the District of Columbia, or in any other part of the United States, is being forced to labor on Sunday. If he were, he has redress already, without the enactment of this bill into law, and that by the Constitution of the United States. Article 13 of amendments to that instrument, declares that 'neither slavery nor involuntary servitude, except as a punishment for crime, whereof the person shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.'"

Legislation unnecessary.

To show that the title was not only disingenuous, but that the legislation itself was unnecessary, Mr. Jones read the following from Mr. Crafts's "Sabbath for Man," page 428:

"Among other printed questions to which I have collected numerous answers, was this one: 'Do you know of any instance where a Christian's refusing to do Sunday work, or Sunday trading, has resulted in his financial ruin?' Of the two hundred answers from persons representing all trades and professions, not one *is affirmative.*"

Continuing, Mr. Jones said:

Not for the laboring man.

"Then what help do the people need? And especially what help do they need that Congress can afford? Wherein is anybody being 'forced to labor on Sunday'? Where is there any danger of anybody's being forced to labor on Sunday? Ah, gentlemen, this effort is not in behalf of the laboring men. They do not need it. By Mr. Crafts's own published documents it is demonstrated that they do not need any such help as is proposed in this bill. That claim is only a pretense under which those who are working for the bill would hide their real purpose. Nobody in this District, nor in the United States, nor in the world around, is being forced to labor on Sunday. . . . It is certain that in this land everybody is free to refuse. This evidence also, coming from the source whence it does come, demonstrates that the title of the bill does not define its real object, but is only a pretense to cover that which is the real purpose — to secure and enforce by law the religious observance of the day."

Title a pretense to cover real purpose.

than one hundred dollars for every such offense: *Provided, however,* That the provisions of this act shall not be construed to apply to any person or persons who conscientiously believe in and observe any other day of the week than Sunday as a day of rest.

Exemption clause.

Instead of attempting to legislate virtue into men, the same speaker solved the problem of Sabbath-keeping for all men in the following heroic and well-timed words:

"All that is requisite to their success is enough love for the right to lead them to refuse to do that which they believe to be wrong. Now there is enough virtue in Jesus Christ, and enough power in that virtue, to enable a man to do right in the face of all the opportunities and all the temptations to do wrong that there are in this world. That virtue and that power are freely given to every man who has faith in him who brought it to the world. Why, then, do not these men,— these professed ministers of the gospel of Jesus Christ,— why do they not endeavor to cultivate in men that faith in Christ which will empower them to do right from the love of it, instead of coming up here to this capitol, and asking you gentlemen of the national Legislature to help men to do what they think right by taking away the opportunity to do what they think to be wrong? Virtue can't be legislated into men. . . . Therefore it is in the interests of manliness and courageous self-dependence that we object to the church managers coming to the national Legislature to secure a law under such a plea as this, whose only effect would be to make grown-up babies of what should be manly men."

Virtue not to be legislated into men.

Manliness encouraged.

It was pointed out also that the District already had a strict Sunday law,— the old Maryland law of 1723, which had been incorporated into the District laws in 1801, and re-adopted in 1874,— and that the passing of this measure, therefore, would be cumulative legislation. (This law since declared obsolete. See page 514.)

District already had a Sunday law.

It was at this time that Mrs. Catlin, the District representative of the Sabbath Observance department of the Woman's Christian Temperance Union, explaining why an exemption clause had been inserted in the bill in favor of conscientious observers of another day, said: "We have given them an exemption clause, and that, we think, will take the wind out of their sails." See page 124. But those who were opposing it were not looking simply to their own interests, but saw in it an evil principle dangerous to the rights and liberties of all. Upon principle, therefore, though exempted from its provisions themselves, they fought it. The exemption meant simply toleration, and was a concession which might easily be withdrawn. The spirit of the bill as a whole was that of intolerance. In the end, its enactment meant persecution.

Why exemption inserted.

Speaking for the Knights of Labor, Mr. Millard F. Hobbs said:

1892.

SUNDAY CLOSING OF THE CHICAGO EXPOSITION.

FIRST NATIONAL SUNDAY LEGISLATION IN THE UNITED STATES.

BILL APPROVED AUGUST 5, 1892.[1]

Appropriation to exposition conditioned on Sunday closing. Loan of $5,000,000.

"And it is hereby declared that all appropriations herein made for, or pertaining to, the World's Columbian Exposition are made under the condition that the said exposition shall not be open to the public on the first day of the week, commonly called Sunday;[2]

Knights of Labor opposed to measure.

"The Knights of Labor are virtually opposed to this bill. Some are in favor of some parts of it; some are in favor of all of it; and some are entirely opposed to all of it. For this reason the Knights of Labor of the District, as an organization, have refused to have anything to do with it. We are all in favor of a day of rest, some of *two* days; but we are afraid of the *religious* side of this question. What benefits the Knights of Labor wish to obtain, we think can be better secured by our own efforts through our own organizations than by the efforts of others, through the church." "American Sentinel," February 27, 1890.

The bill failed of passage, sharing the fate of the Blair measures.

[1] H. R. bill No. 7520 (Sundry Civil), of fifty-second Congress, first session, making loan of $5,000,000. Another bill, H. R. 9710, introduced August 4, and approved August 5, making gift of $2,500,000, had like condition attached. See page 403.

An opportunity to further their cause.

[2] No sooner had the holding of the Chicago World's Columbian Exposition of 1893, commonly known as the World's Fair, been determined upon, and Congress asked for an appropriation to it, than it was seen by the friends of Sunday legislation that here was an opportunity to further their cause by congressional legislation. As a step toward the accomplishment of this, Mr. Morse, a representative from Massachusetts, and Senator Colquitt, of Georgia, early in 1892, introduced in the House and Senate, respectively, the following bill:

"A BILL TO PROHIBIT THE OPENING OF ANY EXHIBITION OR EXPOSITION ON SUNDAY, WHERE APPROPRIATIONS OF THE UNITED STATES ARE EXPENDED.

An omnibus Sunday-closing bill.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:*

"That no exhibition or exposition for which appropriation is made by Congress shall be opened on Sunday.

and if the said appropriations be accepted by the corporation of the State of Illinois, known as the World's Columbian Exposition, upon that condition, it shall be,

"SECTION 2. That any violation of this act shall be punishable by a fine of not less than one hundred dollars nor more than one thousand dollars for every violation of the foregoing act."

This bill was referred to the House and Senate committees on the Columbian Exposition, and at several hearings before them strenuously advocated. It was soon seen by the friends of this bill, however, that its terms were so general, and covered so much, as to endanger its passage. The demand was therefore reduced to the least compatible with the attainment of their purpose. It was determined to secure the Sunday closing of the exposition and the committal of Congress to Sunday legislation by an indirection.

The terms limited.

Accordingly, May 25 Mr. Johnstone, of South Carolina, proposed in the House, the following amendment to the clause of the Sundry Civil bill, then under consideration, appropriating funds for the government exhibit:

Sunday-closing attached to appropriation to government exhibit.

"*Provided,* That no part of the amount hereby appropriated shall be available unless the doors of the exposition shall be closed on Sunday."

This, however, would have made the Sunday closing of the entire exposition a condition precedent to the making of a government exhibit. The next day, May 26, another provision was substituted for this by Mr. Dockery, of Missouri, and passed the House, by a vote of 131 to 36, as follows:

Sunday-closing of government exhibit proposed.

"*Provided,* That the government exhibits at the World's Columbian Exposition shall not be opened to the public on Sundays."

A notable incident immediately followed this. As the quickest way to suggest to the House, evidently, the utter impropriety of the action it had just taken, Mr. Bowers, of California, offered an amendment and made accompanying remarks as follows:

Proposal to close exhibit on Saturday.

"*Resolved,* That the government exhibits at the World's Fair shall not be opened to the public on the Sabbath day, which is Saturday.

"MR. BOWERS: This is a religious question, and Saturday is the only Sabbath day. It was the Sabbath day when Christ was on earth, and it is the Sabbath day now. [Cries of, "Vote!" "Vote!"]

"The question being taken,

"The Chairman said, The Noes seem to have it.

"MR. BOWERS: I call for a division.

Proposal rejected.

"The question again being taken, the amendment of Mr. Bowers was rejected, there being Ayes, 11; Noes, 149." "Congressional Record," May 26, 1892, page 4716.

and it is hereby made, the duty of the World's Columbian Commission, created by act of Congress of April 25, 1890, to make such rules or modification of

It is said by one present that Mr. Bowers's nobly outspoken expression of truth was met "with derision, laughter, and contempt by every member of the House."

Senator Quay proposes closing exposition on the Sabbath.

In the Senate, when an amendment to the Sundry Civil bill appropriating $5,000,000 for the Columbian Exposition was offered, Senator Quay, of Pennsylvania, moved to insert a Sunday-closing provision in language and manner worthy of note,— a provision to be remembered as the real initial step in enforcing religion by law in the United States, in pursuance of the previous declaration of the Supreme Court in the same year, that "this is a Christian nation." See page 487. The following is from the "Congressional Record" of July 10, 1892, page 6614:

"MR. QUAY: On page 122, line 13, after the word 'act,' I move to insert:

"'And that provision has been made by the proper authority for the closing of the exposition on the Sabbath day.'

"The reasons for the amendment I will send to the desk to be read. The secretary will have the kindness to read from the Book of Law I send to the desk, the part enclosed in brackets.

"THE VICE-PRESIDENT: The part indicated will be read.

"The secretary read as follows:

Fourth commandment presented as reason.

"'Remember the Sabbath day, to keep it holy. Six days shalt thou labor, and do all thy work: but the seventh day is the Sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy manservant, nor thy maidservant, nor thy cattle, nor thy stranger that is within thy gates: for in six days the Lord made heaven and earth, the sea, and all that in them is, and rested the seventh day: wherefore the Lord blessed the Sabbath day and hallowed it.'"

During the discussion that followed, as recorded in the "Congressional Record" of July 12, pages 6694-6701,— a discussion that deserves to rank among the great religious councils of the fourth century,— Senator Manderson, of Nebraska, said:

Which day the Sabbath discussed.

"The language of this amendment is that the exposition shall be closed on the 'Sabbath day.' I submit that if the senator from Pennsylvania desires that the exposition shall be closed upon Sunday, this language will not necessarily meet that idea. The Sabbath day is not Sunday. . . . The words 'Sabbath day' simply mean that it is a rest day, and it may be Saturday or Sunday, and it would be subject to the discretion of those who will manage this exposition, whether they should close the exposition on the last day of the week,

the rules of said corporation as shall require the closing of the Exposition on the said first day of the week, commonly called Sunday."

in conformity with that observance which is made by the Israelites and the Seventh-day Baptists, or should close it on the first day of the week, generally known as the Christian Sabbath. . . . It certainly seems to me that this amendment should be adopted by the senator from Pennsylvania, and, if he proposes to close this exposition, that it should be closed on the first day of the week, commonly called Sunday. . . .

"Therefore I offer an amendment to the amendment, which I hope may be accepted by the senator from Pennsylvania, to strike out the words 'Exposition on the Sabbath day,' and insert 'mechanical portion of the exposition on the first day of the week, commonly called Sunday.'"

Sunday amendment proposed.

Mr. Quay agreed to this. But as a final amendment to Mr. Quay's amendment, Senator Gray, of Delaware, offered the provision given at the opening of this section, which was agreed to by Mr. Quay, adopted by the Senate July 14, 1892, by the House July 19, and received the signature of President Harrison August 5, thus becoming the first specific Sunday legislation ever enacted by Congress.

The final amendment.

Thus it is seen how, while the fourth commandment of the decalogue was adduced as the basis of the legislation, the promoters of the legislation were not willing that it should name the day specified in the commandment, but, by definite and express amendment, must needs change the day. As with the fate of the proposition of Mr. Bowers in the House, this shows with how much safety God could trust men to legislate for him in religious matters.

RECOGNIZED AS RELIGIOUS LEGISLATION.

In his "Sabbath for Man," page 194, speaking of Sabbath laws, Rev. W. F. Crafts says: "At first thought they would seem to be *religious* laws." True enough, and so they are; first impressions are usually correct. So was this legislation on the part of Congress touching the closing of the World's Fair on Sunday, religious legislation. Men who were there and took part in it recognized the whole proceedings as religious. Reporting to the New York "Independent," of July 28, 1892, the chaplain of the Senate said:

Sunday laws what they seem —religious.

"During this debate you might have imagined yourself in a general council or assembly or synod or conference, so pronounced was one senator after another."

Senator Hawley said:

"Everybody knows what the foundation is. It is founded in religious belief." "Congressional Record," July 12, 1892.

Founded in religious belief.

And Senator Peffer said of it:

"To-day we are engaged in a theological discussion concerning the observance of the first day of the week." *Ibid.*

Closing his speech, Senator Colquitt betrayed a consciousness that such proceedings and such speeches as he and others had made were out of place in the halls of a civil government, in the following words:

Preaching in Congress.

"But I shall continue this no further, Mr. President, for it may to some sound like cant, like preaching, as though we were undertaking to clothe ourselves in overrighteous habiliments and pretend to be better than other men." *Ibid.*, July 13, 1892, page 6755.

SECURED UNDER RELIGIOUS PRESSURE.

This legislation was not secured without religious pressure and the use of boycotting measures on the part of the church people. To many of the petitions asking for the legislation was attached the following resolution:

A boycotting resolution.

"*Resolved,* That we do hereby pledge ourselves and each other, that we will from this time henceforth refuse to vote for or support for any office or position of trust, any member of Congress, either senator or representative, who shall vote for any further aid of any kind to the World's Fair except on conditions named in these resolutions." "Congressional Record," May 25, 1892, page 5144.

And these petitions and threats of loss of votes were not without effect in Congress. In the discussion in the Senate, Senator Hiscock, of New York, said:

Influence of church threat in Congress.

"If I had charge of this amendment in the interest of the Columbian Exposition, *I would write the provision for the closure in any form that the religious sentiment of the country demands,* and not stand here hesitating or quibbling about it. Rather than let the public sentiment against the exposition being opened on Sunday be reenforced by the opposition in the other House against any legislation of this kind in the interest of the exposition, I say to the junior senator from Illinois [Mr. Palmer], *he had better yield to this sentiment,* and not let it go out to the country that there is the slightest doubt that if this money shall be appropriated, the exposition will be closed on Sunday. . . . If I were interested in this measure, as I might be interested if it were located in my own State, *I should make this closure provision satisfactory to those petitioners* who have memorialized us against the desecration of the Lord's day. . . . I would not leave it uncertain whether the government might engage in business or not upon the Sabbath day." "Congressional Record," July 13, 1892, page 6755.

Better yield to religious sentiment.

Senator Hawley, of Connecticut, said:

"There is no use in endeavoring to escape responsibility. If the Senate to-day decides that it will not close that exposition on

Sunday, the exposition will be opened on that day, and you will have offended more than forty million people — seriously and solemnly offended them. No wise statesman or monarch of modern times, no satrap of Rome, would have thought it wise to fly in the face of a profound conviction of the people he governed, no matter if he thought it a profound error. *It is not wise statesmanship to do it.* . . . Now, if gentlemen repudiate this, if they desire to reject it, if they deny that this is in the true sense of the word a religious nation, I should like to see the disclaimer put in white and black and proposed by the Congress of the United States. Write it. How would you write it? How would you deny that from the foundation of the country, through every fiber of their being, this people has been a religious people? Word it, if you dare; advocate it, if you dare. *How many who voted for it would ever come back here again?* None, I hope." "Congressional Record," July 12, 1892, page 6700, and July 13, page 6759.

Fear of offending church people.

"How many would come back here again?"

Senator West, of Missouri, while evidently opposed to the measure on principle, likewise said:

"If I abhorred anything, it would be any public act of mine which would say to the honest, religious people of the United States, 'I am prepared to flout your opinions, to entirely disregard them, and to stamp upon them my disapprobation by giving a vote directly in conflict with what you have asked.'" *Ibid.*, July 12, page 6697.

It was the same way in the House. A dispatch from Washington to the Chicago "Daily Post" of April 9, 1892, gave the following from an interview with a member of the House Committee on the World's Fair:

Same in House.

"The reason we shall vote for it is, I will confess to you, a fear that, unless we do so, the church folks will get together and knife us at the polls; and — well you know we all want to come back, and we can't afford to take any risks."

Fear of being "knifed" by church folks at polls determines votes.

"Do you think it will pass the House?"

"Yes; and the Senate too. We are all in the same boat. I am sorry for those in charge of the Fair; but self-preservation is the first law of nature, and that is all there is about it."

A COLOSSAL BOYCOTT OF THE FAIR INAUGURATED.

The desired action of Congress had been secured. Notwithstanding this, barring the first two Sundays, the exposition remained open on Sundays during its whole period of five months. Seeing that they were thus being cheated out of the fruits of their efforts, those who had labored so hard to secure this legislation sought in one way and another to have it enforced. First, a great religious boycott of the Fair was proposed and put into operation. Thus Rev. Dr. French, speaking at a Methodist church in Minneapolis, Minnesota, June 11, 1893, said:

Boycott urged.

"We do not yet know what the outcome may be, but if the gates are opened we should like to join and help push forward a colossal boycott of the Fair." Minneapolis "Tribune," June 12, 1893.

The report of the regular weekly conference of Baptist ministers of Chicago, held June 26, 1893, contained the following:

Baptists join boycott.

"Dr. Henson was in favor of a strict boycott being declared against the exposition. The Rev. Dr. Haynes urged the adoption of a stronger protest against the action of the directory, to be circulated among the Baptists of the country, who he claimed numbered five million, and containing a provision binding Baptists everywhere to remain away from the Fair." Chicago "Times," June 27, 1893.

About this same time the following item appeared in the New York "Mail and Express:"

Christian Endeavor Society enlisted.

"The executive committee of the Ohio societies [of Christian Endeavor] is now in session in Cincinnati, and on Monday morning will receive a telegram from Chicago informing them if the gates have been opened on the previous day. Every Christian Endeavor society in the world will be notified, and efforts will be made at once to carry the boycott into effect. This will extend not only to the several million young people in the society, but to all persons whom these members can influence. This will doubtless seriously affect the World's Fair gate receipts." Copied from Sacramento "Daily Record-Union" of September 14, 1893.

A more deliberate or more extensive boycott was perhaps never planned. For months, in consequence of this, to some extent no doubt, the Fair did not pay running expenses.

And not only did these people advocate boycotting the Fair, but insisted that the troops should be called out to enforce the unconstitutional law which they had obtained from Congress, and forcibly close the Fair on Sunday. At a mass-meeting held in the First United Presbyterian Church of Boston, May 18, 1893, the following telegram was ordered sent to President Cleveland:

A call for troops.

"The First United Presbyterian Church of Boston, distrusting both directory and commissioners, appeals to you to suppress Chicago nullification with Jacksonian firmness, and to guard the gates next Sabbath with troops if necessary." "Chicago Herald," May 19, 1893.

The Boston Evangelical Alliance, May 15, 1893, also sent the following telegram to Hon. Richard D. Olney, Attorney-General of the United States:

"The presence of the United States troops at Fort Sheridan holds Chicago anarchists in check. Cannot the administration notify the directory that those troops will be promptly used, if necessary, to maintain inviolate the national authority, and keep the Fair closed on the Lord's day?" *Idem*, May 16.

Another item of the time ran thus:

"If the proceedings now contemplated shall fail, other resources

within the law will be available. The Christian people of this country can fight within the law to have the law observed as well as they can pray." *Idem*, May 31.

"Christians can fight as well as pray."

A minister, writing to one of the dailies at this time, also called attention to the fact that "nullification in this country was shot to death nearly thirty years ago."

From all this it is evident that a most bitter and even murderous spirit prevailed among those who were so insistent on Sunday closing. It is not difficult to see what these people would have done had they had the administration of the law in their own hands. The people would have been compelled to recognize Sunday at the Fair, or there would have been blood shed. Well did the editor of a Western journal, under the heading, "Close the Gates or We'll Kill," write:

"Close the gates or we'll kill."

"The theory of an open Fair on Sunday leaves every one free to remain away from the grounds in compliance with their convictions of duty. But the Sunday closers would compel everybody, including the strangers within our gates, or rather without our gates, to comply with the religious-enforcing statute. The Book which says, 'Remember the Sabbath day,' also says, 'Thou shalt not kill,' yet so furious is the zeal of the closers to keep the gates shut to show the world 'that we are a Christian nation,' that they even appeal to the President to enforce closing, if need be, by military force! Who could doubt our Christianity after visiting Chicago some fine Monday morning and finding the outer walls of the Fair grounds piled high with bloody corpses of men, deliberately shot down like dogs, that, forsooth, we might show to the heathen world there assembled, 'that we are a Christian nation'?" Webster City "Graphic-Herald," quoted in the Des Moines "Leader," June 1, 1893.

This is sufficient to show that not only the boycotting but a wrathful, compelling spirit is connected with the movement for the enforcement of Sunday observance by law, and to indicate what may be expected when the movement takes shape and becomes general.

Dean Milman speaks truly when he says: "Intolerance seems inherent in the religious spirit, when armed with authority;" and he adds, "The separation of the ecclesiastical and civil powers appears to be the only means of at once maintaining religion and tolerance." It is not a little significant that the first Sunday law ever enacted in America carried with it the death penalty (see page 33); and it is not less significant that the very first direct Sunday legislation ever secured from Congress its promoters asked to have enforced at the point of the bayonet, and began to talk about "boycotting," "fighting," "shooting," and the "calling out of troops." Another has well said: "The religion that makes you feel like fighting your brother never came from God, for God is love."

Significant facts.

1901.

SUNDAY CLOSING OF THE ST. LOUIS EXPOSITION.

CONDITION TO BILL APPROPRIATING $5,000,000.[1]

The Sunday-closing proviso.

There is hereby appropriated out of any money in the Treasury, not otherwise appropriated, the sum of five million dollars to aid in carrying forward said exposition. . . . . *Provided,* That as a condition precedent to the payment of this appropriation the directors shall contract to close the gates to visitors on Sundays during the whole duration of the fair.[2]

[1] H. R. bill No. 9829, fifty-sixth Congress, first session.

[2] February 18, 1901, this bill passed the House without any Sunday-closing provision. In the Senate a Sunday-closing amendment was inserted, and the bill passed the Senate as amended, February 28, 1901. At first the House refused to accept of the bill with this provision in it; but finally, on March 1, after two conferences had been held, withdrew its objection, and the bill was agreed to as passed by the Senate.

Secured under clerical lobbying and religious pressure.

That this amendment was secured as the result of clerical lobbying and religious pressure, and in spite of much objection to it in Congress, there is abundant evidence. In its official organ, "The Sabbath," for May, 1902, the American Sabbath Union said:

"The latter part of February, 1900 [1901 is doubtless intended], Dr. Wilbur F. Crafts, of the Reform Bureau, Washington, D. C., sent a telegram to the General Secretary [of the American Sabbath Union, Dr. I. W. Hathaway], calling him to Washington to aid in securing an amendment to the bill appropriating $5,000,000 to the Louisiana Purchase Exposition.

"February 22 [18] this bill passed the House of Representatives without any Sunday condition. When it came to the Senate, Senator Teller consented to move the following amendment:

"'As a condition precedent to the payment of this appropriation, the directors shall contract to close the gates to visitors on Sundays during the whole duration of the fair.'

Days of unceasing effort.

"We were assured by several senators that it was useless, and that such an amendment would not pass, but after several days of unceasing effort on the part of Drs. Crafts and Hathaway, this bill, with this amendment, was passed by the Senate.

"After nearly another week, during which every effort was made by those who introduced the bill in the House to get rid of this amendment, it was adopted as amended by both the House and the Senate as a part of the Civil Sundry bill, and received the signature of the President."

SUNDAY CLOSING OF THE JAMESTOWN EXPOSITION. 1906.

BILL APPROPRIATING $250,000 AGREED TO JUNE 29, 1906.[1]

That in aid of the said Jamestown Tercentennial Exposition the sum of two hundred and fifty thousand dollars is hereby appropriated. . . . *Provided,* That as a condition precedent to the payment of this appropriation in aid of said exposition, the Jamestown Exposition Company shall agree to close the grounds of the said exposition to visitors on Sunday during the period of said exposition.[2]

Sunday-closing proviso.

1 H. R. 19844, and Public Document No. 383, fifty-ninth Congress, first session, page 78.

2 For this exposition, celebrating the three hundredth anniversary of the first permanent settlement in the United States, held at Jamestown, Virginia, in 1907, Congress appropriated, altogether, over one million dollars. As with previous expositions, through the strenuous efforts of Sunday-rest organizations and Sunday-law agitators, the opposition met in the House was overcome, and a Sunday-closing rider was finally secured to a portion of this. Thus, in a four-page leaflet, entitled "The American Sabbath Union," issued about this time, appeared the following:

Secured through strenuous efforts of religious organizations.

"The International Federation of Sunday Rest Associations of the United States and Canada, has been the main agency by which the following clause was inserted in the bill making the appropriation: 'The grounds of the exposition shall be closed on Sundays.' This is another grand victory for the Sabbath cause. The American Sabbath Union, as one of the constituent organizations of this International Federation, labored diligently and continuously for months, in connection with other associations, to achieve this great triumph."

The following note, headed "Complete Sunday Closing of Jamestown Exposition Assured," accompanying a "syndicate article from Wilbur F. Crafts, Washington, D. C., released May 31 (1906)," throws additional light upon the subject:

"The battle for the complete Sunday closing of the gates of the Jamestown Exposition has been fully won. The Committee of Congress reported in favor of closing only the 'exhibits and amusements'— not the gates. The superintendent of the International Reform Bureau went to Norfolk and persuaded the exposition management to vote complete closing, and the law will therefore close the gates by contract. (Signed) Wilbur F. Crafts."

How it was done.

Jan. 29, 1908.

A MEMORIAL TO CONGRESS.[1]

INTRODUCED IN BOTH HOUSES OF CONGRESS JANUARY 29, 1908.

To the Honorable Senate and House of Representatives in Congress Assembled:

Your memorialists respectfully represent that the body of Christian believers with which they are connected, the Seventh-day Adventists, and whose views they represent, has a growing membership residing in every State and Territory in the Union; that nearly all these members are native-born American citizens; and that it is supporting missionaries and has a following in every continent of the world. It is a Protestant body, which was established in this country about sixty years ago.

A body of Christian believers.

We recognize the authority and dignity of the American Congress, as being the highest law-making power in the land, to whose guidance and fostering care have been committed the manifold interests of this great country; and our justification for presenting this memorial to your honorable body is that we are not seeking to direct your attention to any private or class concerns, but to principles which are fundamental to the stability and prosperity of the whole nation. We therefore earnestly ask your consideration of the representation which we herewith submit.

Object of memorial.

CHURCH AND STATE DIVINELY ORDAINED.

We believe in civil government as having been divinely ordained for the preservation of the peace of society, and for the protection of all citizens in the enjoyment of those inalienable rights which are the highest gift to man from the Creator. We regard properly constituted civil authority as supreme in the sphere in which it is legitimately exercised, and we

Object of civil government as ordained of God.

[1] Printed in the "Congressional Record" of January 29, 1908, pages 1281, 1282.

conceive its proper concern to be "the happiness and protection of men in the present state of existence; the security of the life, liberty, and property of the citizens; and to restrain the vicious and encourage the virtuous by wholesome laws, equally extending to every individual." As law-abiding citizens, we seek to maintain that respect for authority which is the most effective bulwark of just government, and which is especially necessary for the maintenance of republican institutions upon an enduring basis.

Respect for authority.

We heartily profess the Christian faith, and have no higher ambition than that we may consistently exemplify its principles in our relations to our fellowmen and to the common Father of us all. We cheerfully devote our time, our energies, and our means to the evangelization of the world, proclaiming those primitive principles and doctrines of the gospel which were interpreted anew to mankind by the Saviour of the world, and which were the fundamental truths maintained by the church in apostolic times. We regard the Holy Scriptures as the sufficient and infallible rule of faith and practice, and consequently discard as binding and essential all teachings and rituals which rest merely upon tradition and custom.

Highest ambition of memorialists.

Holy Scriptures sufficient guide in religious matters.

THE TWO SPHERES DISTINCT.

While we feel constrained to yield to the claims of civil government and religion, as both being of divine origin, we believe their spheres to be quite distinct the one from the other, and that the stability of the republic and the highest welfare of all citizens demand the complete separation of church and state. The legitimate purposes of government "of the people, by the people, and for the people," are clearly defined in the preamble of the national Constitution to be to "establish justice, insure domestic tranquillity, provide for the common defense, promote the

Separation of church and state.

general welfare, and secure the blessings of liberty" to all. All these aims are of a temporal nature, and grow out of the relations of man to man. The founders of the nation, recognizing that "the duty which we owe our Creator, and the manner of discharging it, can only be directed by reason and conviction, and is nowhere cognizable but at the tribunal of the universal Judge," wisely excluded religion from the concerns of civil government, not because of their indifference to its value, but because, being primarily a matter of the heart and conscience, it did not come within the jurisdiction of human laws or civil compacts. The recognition of the freedom of the mind of man and the policy of leaving the conscience untrammeled by legislative enactments have been abundantly justified by a record of national development and prosperity which is unparalleled in history. This is the testimony of our own experience to the wisdom embodied in the principle enunciated by the divine Teacher of Christianity: "Render to Cæsar the things that are Cæsar's, and to God the things that are God's."

Founders of nation wisely excluded religion from legislation.

The principle abundantly justified.

WHAT GOD PUT ASUNDER MAN SHOULD NOT UNITE.

We, therefore, view with alarm the first indication of a departure from this sound principle. In the history of other nations of the world, where church and state have been united to a greater or less degree, or where the struggle to separate them is now in progress, we have a warning, ofttimes written in blood, against the violation of this doctrine which lies at the foundation of civil and religious liberty. We affirm that it is inconsistent with sound reasoning to profess firm adherence to this principle of the separation of church and state, and at the same time endeavor to secure an alliance between religion and the state, since the church is simply religion in its organized and concrete expression; and, furthermore, that the same au-

History gives solemn warning.

Church and state and religion and state same thing in principle.

thority which can distinguish between the different religions demanding recognition, and give preference to one to the exclusion of the others, can with equal right and equal facility distinguish between the different denominations or factions of the same religion, and dispense to one advantages which it denies to the others. These considerations ought to make it doubly clear that what God has put asunder, man ought not to attempt to join together.

Should remain separate.

A LESSON FROM HISTORY.

A more specific reference to an important period of history may illustrate and enforce the affirmations herein set forth. Under a complete union of a heathen religion and the state, with extreme pains and penalties for dissenters, the first disciples, directed by the divine commission, proclaimed the doctrines of Christianity throughout the Roman empire. For nearly three centuries the warfare of suppression and extinction was waged by this haughty power, glorying in the superiority of its own religion, against non-resistant but unyielding adherents to the right to worship according to the dictates of their own consciences. Then came a reversal of the unsuccessful policy, and what former emperors had vainly sought to destroy, Constantine as a matter of governmental expediency embraced, and Christianity became the favored religion.

Early Christians and the Roman state.

A reversal of the policy.

Then began that period of "indescribable hypocrisy" in religion, and of sycophancy and abuse of power in the state. "The apparent identification of the state and the church by the adoption of Christianity as the religion of the empire, altogether confounded the limits of ecclesiastical and temporal jurisdiction. The dominant party, when it could obtain the support of the civil power for the execution of its intolerant edicts, was blind to the dangerous and unchristian principles which it tended to establish. . . . Chris-

Christianity adopted as the state religion.

tianity, which had so nobly asserted its independence of thought and faith in the face of heathen emperors, threw down that independence at the foot of the throne, in order that it might forcibly extirpate the remains of paganism, and compel an absolute uniformity of Christian faith."— *Milman.*

The beginning of the world's midnight — the dark ages.

"To the reign of Constantine the Great may be referred the commencement of those dark and dismal times which oppressed Europe for a thousand years. . . . An ambitious man had attained to imperial power by personating the interests of a rapidly growing party. The unavoidable consequences were a union between church and state; a diverting of the dangerous classes from civil to ecclesiastical paths, and the decay and materialization of religion."— *Draper.* Succeeding decades bore testimony to the fact that "the state which seeks to advance Christianity by the worldly means at its command, may be the occasion of more injury to this holy cause than the earthly power which opposes it with whatever virulence."— *Neander.*

State aid worse than state oppression.

Persecution but a series of logical steps.

It was but a series of logical steps from the union of church and state under Constantine to the dark ages and the Inquisition, some of these steps being the settlement of theological controversies by the civil power, the preference of one sect over another, and the prohibition of unauthorized forms of belief and practice; and the adoption of the unchristian principle that "it was right to compel men to believe what the majority of society had now accepted as the truth, and, if they refused, it was right to punish them."

A UNION OF CHURCH AND STATE INJURIOUS.

The inevitable fruit of the false idea.

All this terrible record, the horror of which is not lessened nor effaced by the lapse of time, is but the inevitable fruit of the acceptance of the unchristian and un-American doctrine, so inimical to the interests of both the church and the state, that an alliance be-

tween religion and civil government is advantageous to either. If the pages of history emphasize one lesson above another, it is the sentiment uttered on a memorable occasion by a former President of this republic: "Keep the state and the church forever separate."

RELIGIOUS LEGISLATION IN COLONIAL TIMES.

The American colonists, who had lived in the mother country under a union of the state and a religion which they did not profess, established on these shores colonial governments under which there was the closest union between the state and the religion which they did profess. The freedom of conscience which had been denied to them in the old country, they denied to others in the new country;[1] and uni-

Inconsistency of the American colonists.

[1] President Taft gave expression to this fact in an address delivered at Norwich, Connecticut, July 5, 1909, at a celebration of the 250th anniversary of this historic New England town. He said:

President Taft voices sentiment.

"We speak with great satisfaction of the fact that our ancestors — and I claim New England ancestry — came to this country in order to establish freedom of religion. Well, if you are going to be exact, they came to this country to establish freedom of their religion, and not the freedom of anybody else's religion.

New England ancestors came to establish only their own freedom.

"The truth is, in those days such a thing as freedom of religion was not understood. Erasmus, the great Dutch professor, one of the most eloquent scholars of his day, did understand it and did advocate it, but among the denominations it was not certainly fairly understood.

Religious freedom not then understood.

"We look with considerable horror and with a great deal of condemnation upon those particular denominations that punished our ancestors because our ancestors wished to have a different kind of religion, but when our ancestors got here in this country and ruled, they intended to have their own religion and no other; but we have passed beyond that, and out of the friction, out of the denominational prejudices of the past, we have developed a freedom of religion that came naturally and logically as we went on to free institutions. It came from those very men who built up your community and made its character.

Colonists practiced what they condemned in others.

"The Rev. James Fitch could not look upon any other religion in this community with any degree of patience, but his descendants, firm in the faith as he was, now see that the best way to promote

formity of faith, church attendance, and the support of the clergy were enforced by laws which arouse righteous indignation in the minds of liberty-loving men of this century. The pages of early American history are stained with the shameful record of the persecution which must always attend the attempt to compel the conscience by enforcing religious observances. The Baptists were banished, the Quakers were whipped, good men were fined, or exposed to public contempt in the stocks, and cruel and barbarous punishments were inflicted upon those whose only crime was that they did not conform to the religion professed by the majority and enforced by the colonial laws. All these outrages were committed in the name of justice, as penalties for the violation of civil laws. "This was the justification they pleaded, and it was the best they could make. Miserable excuse! But just so it is: wherever there is such a union of church and state, heresy and heretical practises are apt to become violations of the civil code, and are punished no longer as errors in religion, but as infractions of the laws of the land."— *Baird.* Thus did the American colonies pattern after the governments of the Old World, and thus was religious persecution transplanted to the New World.

American history stained with record of persecution.

Non-conformity treated as offence against civil law.

Patterned after Old World.

"A NEW ORDER OF THINGS."

National government established on new order of things.

We respectfully urge upon the attention of your honorable body the change which was made when

Christianity best promoted by individual freedom.

Christianity and the worship of God and religion is to let every man worship God as he chooses." Washington "Post," July 6, 1909.

Two days later, July 7, 1909, at Cliff Haven, New York, addressing the students of the Catholic summer school of America, Mr. Taft again said:

Puritans wished liberty for themselves.

"We are reaching a point where we are more tolerant. Religious tolerance is a modern institution. We of Puritanical ancestry believe we were the inventors of religious tolerance and religious liberty. As a matter of fact, we wanted religious liberty for ourselves and wanted everybody else to worship exactly as we did." Washington "Times," July 7, 1909.

the national government was established. The men of those times learned the meaning and value of liberty not only of the body but also of the mind, and "vindicating the right of individuality even in religion, and in religion above all, the new nation dared to set the example of accepting in its relations to God the principle first divinely ordained of God in Judea."— *Bancroft.* Warned by the disastrous results of religious establishments in both the Old and the New World, these wise builders of state excluded religion from the sphere of the national government in the express prohibition, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." Thus they founded a nation — the first in all history — upon the Christian idea of civil government,— the separation of church and state. And the century and more of liberty and prosperity which has crowned their efforts, and the wide-spread influence for good which the example of this nation has exerted upon the world at large in leading the way toward freedom from the bondage of religious despotisms and ecclesiastical tyrannies, has demonstrated the wisdom of their course. The "new order of things" to which testimony is borne on the reverse side of the Great Seal of the United States, introduced an era of both civil and religious liberty which has been marked by blessings many and great, both to the nation and to religion.

The Christian idea of civil government.

The wisdom of the founders of the nation vindicated.

A new era introduced.

A MOVEMENT TO REVERSE THE ORDER.

We are moved to present this memorial, however, because of the persistent and organized efforts which are being made to secure from Congress such legislation as will commit the national government to a violation of this great principle, and to the enforcement of a religious institution. Already there have been introduced during the present session of Congress five bills of this nature:

Movements calling for legislation violating this principle.

"S. 1519, A bill to prevent Sunday banking in post-offices in the handling of money-orders and registered letters."

"H. H. 4897, A bill to further protect the first day of the week as a day of rest in the District of Columbia."

"H. R. 4929, A bill prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day."

Five Sunday bills in Congress.

"H. R. 13471, A bill prohibiting work in the District of Columbia on the first day of the week, commonly called Sunday."

"S. 3940, A bill requiring certain places of business in the District of Columbia to be closed on Sunday."[1]

While a merely cursory reading of the titles of these bills may not indicate clearly their full significance, we affirm that an examination of their provisions will reveal the fact that they involve the vital principle of the relation of government to religion. Their passage would mark the first step on the part of the national government in the path of religious legislation — a path which leads inevitably to religious persecution. If government may by law settle one religious controversy and enforce one religious institution, it may logically settle all religious controversies and enforce all religious institutions, which would be the complete union of church and state and an established religion. We seek to avoid the consequences by denying the principle. We are assured that the only certain way to avoid taking the last step in this dangerous experiment upon our liberties is to refuse to take the first step.

The first step toward persecution.

One point conceded involves all.

The only way to avoid taking the last step.

ALL COMPULSION IN RELIGION IRRELIGIOUS.

Protection the duty of civil government.

We hold it to be the duty of civil government to protect every citizen in his right to believe or not to believe, to worship or not to worship, so long as in

[1] Before this Congress closed, ten measures of this kind were introduced, including a proposed religious amendment to the Constitution (S. R. 125) to preface the preamble to the Constitution with the words, "In the name of God," besides nine for the restoration of the motto, "In God we trust," on the coins. See pages 406-408.

the exercise of this right he does not interfere with the rights of others; but "to pretend to a dominion over the conscience is to usurp the prerogative of God." However desirable it may seem to some who profess the Christian faith to use the power of government to compel at least an outward respect for Christian institutions and practices, yet it is contrary to the very genius of Christianity to enforce its doctrines or to forge shackles of any sort for the mind. The holy Author of our religion recognized this great principle in these words: "If any man hear my words, and believe not, I judge him not." The triumphs of the gospel are to be won by spiritual, rather than by temporal, power; and compulsion may be properly employed only to make men civil.

Coercion contrary to the genius of Christianity.

Triumphs of the gospel not won by temporal power.

Therefore, in the interest of the nation, whose prosperity we seek; in the interest of pure religion, for whose advancement we labor; in the interest of all classes of citizens, whose rights are involved; in the interest of a world-wide liberty of conscience, which will be affected by the example of this nation; in the interest even of those who are urging this legislation, who are thereby forging fetters for themselves as well as for others, we earnestly petition the Honorable Senate and House of Representatives in Congress assembled, not to enact any religious legislation of any kind whatsoever, and particularly not to pass the bills to which reference has been made in this memorial. And for these objects your memorialists, as in duty bound, will ever pray.[1]

In the interests of all concerned Congress asked not to enact any religious law.

THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS:

A. G. DANIELLS, *President;*
W. A. SPICER, *Secretary.*

[1] Under the heading, "A Reasonable Petition," the Washington "Post" of February 11, 1908, commented editorially upon this memorial as follows:

Comment of Washington "Post."

Congress should grant petition.

"In the interest of religious liberty, in respect for an alert conscience, Congress ought to grant the petition of the Christian sect known as the Seventh-day Adventists, asking that those of that faith may be legally authorized to keep Saturday as their Sabbath day in the District of Columbia. Nobody but the most churlish bigot can object. The Christian religion is much a matter of faith, and it is the belief of the Adventists that Saturday is the true Sabbath.

Much in creed that appeals to mind and heart.

"While this paper is a Christian in walk and talk it is not a sectarian, but we are free to say that there is much in the creed, if it be a creed, of the Adventist that appeals to the mind and the heart.

"It is commanded that we keep the Sabbath day. There is a difference of opinion as to which day of the week is the Sabbath. Nearly all Christians accept Sunday as the Sabbath; but great numbers of our citizens, notably the Jews, believe that Saturday is the proper day, and among them the Adventists.

Sabbath legislation a violation of first amendment, and offspring of persecuting zealot.

"It is an act of despotism, a flat defiance of the first amendment to the Federal Constitution, and a truckling to fanaticism, to prescribe any particular day that the citizen shall keep as the Sabbath. It is the legitimate offspring of the demoniac zealot that sets up the torture chamber to vindicate the Lamb of God and hasten his reign on earth of peace and good will to men. . . .

No other sect can show a better citizenship.

"As for the Adventists — no other sect can show a better citizenship. They are industrious, frugal, and peaceable. If all other men were no more prone to evil than they, the grand jury would have little to do, and courts, civil as well as criminal, could take a vacation of at least six days in the week and have little to do the seventh.

"Their petition is reasonable, and we do not see how any one can object to it."

Misconception as to object of the memorial.

The "Post" falls into a very natural error in supposing the Adventists petitioned to be "legally authorized to keep Saturday as the Sabbath day." That would be a serious violation of the very principle for which they contend. They do not ask any legislature for a right freely given them of Heaven. What they here contend for is that there shall be no religious legislation whatever, and that all others as well as themselves, shall be protected in the exercise of their religious rights. See closing paragraph of memorial.

No legislation wanted.

The New York "Times" of February 3, 1908, referred to the memorial thus:

A noteworthy document, rich in historical citations.

"A document of interesting literary, religious, and political significance. . . . It is rich in its citations of historical precedent, clear and strong in its argument against the union of church and state, and apt in its quotations of authorities, from Neander to Bancroft. . . . The Seventh-day Adventists remember the Sabbath and keep it holy on Saturday. . . . Their present position is interesting, and their memorial is a noteworthy document."

MEMORIAL AGAINST SUNDAY LEGISLATION.[1]

March 3, 1908.

PRESENTED IN CONGRESS MARCH 3, 1908.

To the Honorable Senate and House of Representatives in Congress Assembled:

The Seventh-day Baptists of the United States, for and in behalf of whom this memorial is laid before you, beg leave to call attention to their record as advocates and defenders of constitutional, civil, and religious liberty ever since their organization in Newport, Rhode Island, in 1671 A. D. That record includes colonial governments, the Continental Congress, where they were represented by Hon. Samuel Ward, the services of German Seventh-day Baptists of Ephrata, Pennsylvania, and other points of interest. Having such a history and inheritance, we respectfully and confidently ask and petition that you will not enact any of the following bills, now in the hands of the Committees on the District of Columbia, namely:

Record of Seventh-day Baptists.

Pray no Sunday bills be passed.

"S. 1519. A bill to prevent Sunday banking in post-offices in the handling of money-orders and registered letters."

"H. R. 4897. A bill to further protect the first day of the week as a day of rest in the District of Columbia."

"H. R. 4929. A bill prohibiting labor on buildings, etc., in the District of Columbia on the Sabbath day."

"H. R. 13471. A bill prohibiting work in the District of Columbia on the first day of the week, commonly called 'Sunday.'"

"S. 3940. A bill requiring certain places of business in the District of Columbia to be closed on Sunday."

1 Printed in the "Congressional Record" of March 3, 1908, pages 2891, 2892.

Basis of memorial.

We base this memorial on the following grounds:

Forbidden by Constitution.

First. The Constitution of the United States declares that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof." That Sunday legislation is forbidden under this act is shown by the records of Congress from 1808 to 1830. The question came to the front under an act of April 30, 1810, establishing the Postal Department and requiring the opening of post-offices and the transmission of mail on every day in the week. Remonstrances and petitions followed the enactment of this law. Postmaster-General Granger, January 30, 1811, reported that he had sent the following instructions to postmasters:

Postal regulation of 1811.

"At post-offices where the mail arrives on Sunday the office is to be kept open for the delivery of letters, etc., for one hour after arrival and assorting of the mail; but in case that would interfere with the hours of public worship, then the office is to be kept open for one hour after the usual time of dissolving the meetings, for that purpose."

He also reported that an officer had been prosecuted in Pennsylvania for refusing to deliver a letter on Sunday not called for within the time prescribed, and said he doubted whether mail could be legally refused to any citizen at any reasonable hour on any day of the week. "American State Papers," volume xv, page 45.

The agitation from 1811 to 1830.

Reports, discussions, and petitions concerning Sunday mails crowd the annals of Congress from 1811 to 1830. Mr. Rhea, chairman of the Committee on Post-Offices, reported adversely concerning efforts to secure a change in the law requiring Sunday opening on January 3, 1812; June 15, 1812; and January 20, 1815. Postmaster-General Granger made adverse report January 16, 1815, saying:

"The usage of transporting the mails on the Sab-

bath is coeval with the Constitution of the United States."

Adverse report adopted by House.

January 27, 1815, Mr. Daggett made an adverse report, that was considered by the House in Committee of the Whole February 10, 1815, and after various efforts at amendment, was passed, as follows:

"*Resolved,* That at this time it is inexpedient to interfere and pass any laws on the subject-matter of the several petitions praying the prohibition of the transportation and opening of the mail on the Sabbath."

March 3, 1825, an act was passed "To reduce into one the several acts establishing the Post-Office Department," section 11 of which reads as follows:

Postal law of 1825.

"*And be it further enacted,* That every postmaster shall keep an office, in which one or more persons shall attend on every day on which a mail shall arrive, by land or water, as well as on other days, at such hours as the Postmaster-General shall direct, for the purpose of performing the duties thereof; and it shall be the duty of the postmaster, at all reasonable hours, on every day of the week, to deliver, on demand, any letter, paper, or packet, to the person entitled to, or authorized to receive, the same."

Discussion renewed, and Congress flooded with petitions.

This renewed the discussion throughout the country, and Congress was flooded with petitions and counter-petitions, which were referred to the Committee on Post-Offices and Post-Roads, of which Richard M. Johnson was chairman. He made an elaborate report to the Senate January 19, 1829, and to the House March 4 and 5, 1830. These reports were exhaustive and able documents. They centered around the question of Congressional legislation on religious subjects, all phases of which were considered with marked ability and candor.

Character of Mr. Johnson's reports.

When he presented the report before the Senate, Mr. Johnson said:

Petitions called upon Congress to settle religious differences.

"Now, some denominations considered one day the most sacred, and some looked to another, and these petitions for the repeal of the law of 1825 did, in fact, call upon Congress to settle what was the law of God. The committee had framed their report upon principles of policy and expediency. It was but the first step taken, that they were to legislate upon religious grounds, and it made no sort of difference which was the day asked to be set apart, which day was to be considered sacred, whether it was the first or the seventh, the principle was wrong. It was upon this ground that the committee went in making their report." "Register of Debates in Congress," volume v, pages 42, 43.

Principle wrong.

Representative passages from Senator Johnson's report are as follows:

Representative passages from the Sunday Mail Report.

"Extensive religious combinations, to effect a political object, are, in the opinion of the committee, always dangerous. This first effort of the kind calls for the establishment of a principle which, in the opinion of the committee, would lay the foundation for dangerous innovations upon the spirit of the Constitution and upon the religious rights of the citizens. . . .

"Congress has never legislated upon the subject. It rests, as it ever has done, in the legal discretion of the Postmaster-General, under the repeated refusals of Congress to discontinue the Sabbath mails. . . .

"While the mail is transported on Saturday, the Jew and the Sabbatarian may abstain from any agency in carrying it from conscientious scruples. While it is transported on the first day of the week, any other class may abstain, from the same religious scruples. The obligation of the government is the same to both these classes; and the committee can discern no principle on which the claims of one should be respected more than those of the other, unless it should be admitted that the consciences of the minority are less

sacred than those of the majority." S. Docs. 2d sess., 20th Cong., Doc. 46; also "Register of Debates," volume v, Appendix, page 24.

Report settled question for many years.

The adoption of Mr. Johnson's report settled the question of Sunday legislation by Congress for many years. Its revival calls forth this memorial asking that Congress will not reverse its decision made in 1830.

Congress determined to abide by Constitution.

Second. In addition to the fact that after a discussion lasting twenty years, Congress determined to abide by its constitutional restrictions touching Sunday laws, we offer another objection to the bills now before it. Leaving out the historic fact that Sunday laws have always been avowedly religious, we call attention to the religious elements and principles contained in the bills now before you. They create crime by assuming that secular labor and ordinary worldly affairs become criminal at 12 o'clock on Saturday night and cease to be criminal twenty-four hours later; they assume that the specific twenty-four hours known as the "first day" of the week may not be devoted to ordinary affairs, because of the sinfulness and immorality resulting from such use of those specific hours. The fact that religious leaders are the main promoters of Sunday legislation shows that religious convictions are at the basis of Sunday laws, and that religious ends are sought through their enforcement. The terms used, although somewhat modified in modern times, denote that the proposed laws spring from religious conceptions. There can be no distinction between "secular" and "sacred," "worldly" and "unworldly," except on religious grounds. There is no reason, either in logic or in the nature of our civil institutions, why the first day of the week should be legislated into a day of idleness any more than the fourth day. Through all history cessation from "worldly pursuits" on either the seventh or the first day of the week has been considered a form of religious duty.

Sunday bills religious.

Religious leaders chief promoters.

Religious terms used.

No reason for making Sunday a day of idleness.

Crime not determined by day of week.

Actions and transactions intrinsically right, which promote prosperity, good order, and righteousness, can not be changed into crimes at a given moment — by the clock — and purged from criminality "by act of Parliament" twenty-four hours later.

If there be need of protecting employed persons from abuse or overwork, that need will be met in full by some law like the following:

Suggestion how to protect employed persons.

"*Be it enacted,* That every employed person shall be entitled to one day of rest each week. The claiming of this right shall not prejudice, injure, nor interfere with any engagement, position, employment, or remuneration as between employed persons and those by whom they are employed."

In view of the foregoing and many similar reasons, your memorialists respectfully urge Congress not to enact any of the Sunday-law bills now before your honorable body.

In behalf of the Seventh-day Baptists of the United States, by the American Sabbath Tract Society, Plainfield, New Jersey.[1]

Stephen Babcock, A. M., *President,*
48 Livingston Ave., Yonkers, New York.

Abram Herbert Lewis, D. D., LL. D., *Cor. Sec.,*
633 West Seventh St., Plainfield, New Jersey.

February, 1908.

[1]The following note, containing items of interest relating to the connection Seventh-day Baptists had with national affairs in colonial and Revolutionary times, accompanied the memorial, and was likewise published with it in the "Congressional Record" of March 3, 1908, page 2892:

Note accompanying memorial.

Seventh-day Baptists took prominent part in Revolutionary War.

"Some of the facts referred to in the opening of the foregoing memorial are these: Through the Hon. Samuel Ward and others, Seventh-day Baptists took a prominent part in the struggle by which the nation was brought into existence. Being then governor of the colony of Rhode Island, Mr. Ward was the first of the colonial governors who refused to enforce the stamp act of 1765. His pub-

lished letters — Westerly, Rhode Island, December 31, 1773; and Newport, Rhode Island, May 17, 1774 — had much influence in the formation of the Continental Congress that met at Philadelphia, September 5, 1774. Mr. Ward and Stephen Hopkins were the first two delegates to that Congress elected by any colony. They were chosen June 15, 1774. Mr. Ward was a member of subsequent Congresses until his untimely death, March 26, 1776, because of which his name did not appear among the signers of the Declaration of Independence. He was one of the most prominent and efficient men in the Congress. John Hancock called him to be presiding officer of Congress, sitting in 'Committee on the Whole' May 26, 1775, in which committee all the important work of Congress was formulated. Mr. Ward occupied that place almost continually during the sessions of 1775 and 1776. In his official capacity, June 15, 1775, he reported the appointment of Col. George Washington, of Virginia, to be Commander in Chief of the Continental forces. His published correspondence with Washington and others are important documents touching the work of the Continental Congress. Mr. Ward's son, Samuel, was a captain in the Twelfth Rhode Island Regiment. George Washington wrote to Governor Ward, from Cambridge, Massachusetts, in August, 1775, speaking highly of his son as a competent officer.

Reported appointment of Washington as commander.

"The Assembly of Rhode Island led in the movement for a colonial navy. On the third of October, 1775, Mr. Ward presented the recommendations of the Rhode Island Assembly, and on December 11 of that year Congress acted upon those recommendations, and the first thirteen ships were ordered, these being the nucleus of the navy of the United States. Mr. Ward's last letter was dated at Philadelphia, March 6, 1776. It was a high type of Christian patriotism, and his relations with Benjamin Franklin are shown in the closing sentence: 'Doctor Franklin does me the favor to take charge of this letter.' March 15, he was compelled to leave his place while Congress was in session. Virulent smallpox developed, from which he died March 26, 1776. The Continental Congress, the General Assembly of Pennsylvania, and the mayor and councilmen of the city of Philadelphia attended the funeral officially, and the members of Congress wore mourning crape for a month in memory of Mr. Ward. The published correspondence of John Adams describes Mr. Ward's funeral, and speaks in high terms of his ability and influence.

Nucleus of United States navy.

Friend of Franklin.

Commended by John Adams.

IN PENNSYLVANIA.

"The German Seventh-day Baptists of Pennsylvania were also prominent supporters of the colonial government through their representative at Ephrata, Pennsylvania. After the battle of Brandywine, September 11, 1777, the public buildings of the Seventh-day Baptists and their private homes were thrown open as hospitals, in which

German seventh-day Baptists likewise aided in Revolution.

Jan. 27, 1910.

JOHNSTON DISTRICT SUNDAY BILL.

AS IT PASSED THE SENATE JANUARY 27, 1910.

A BILL FOR THE PROPER OBSERVANCE OF SUNDAY AS A DAY OF REST IN THE DISTRICT OF COLUMBIA.[1]

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall be unlawful for any person or corporation in the District of Columbia on the first day of the week, commonly called Sunday, to labor at any trade or secular calling, or to employ or cause to be employed his apprentice or servant in any labor or business, except in household work or other work of necessity or charity, and except also newspaper publishers and their employees, bootblacks and porters, and except also public-service corporations and their employees, in the necessary supplying of service to the

Secular labor unlawful.

Exceptions.

not less than five hundred sick and wounded soldiers became the guests of the Seventh-day Baptists during the dreary winter of 1777-78. 'Typhus' became epidemic, and many soldiers died, together with a number of Seventh-day Baptist women who acted as nurses. These soldiers were buried in the Seventh-day Baptists' cemetery, where a fitting monument stands above their dust.

Declaration of Independence translated and published by them.

"When the Declaration of Independence was to be sent out, through which the infant republic asked place among the nations of the world, Peter Miller, a Seventh-day Baptist scholar of Ephrata, translated that Declaration into various foreign languages, and copies of these were prepared in the printing-office of the Seventh-day Baptists at Ephrata."

[1] This bill, known as Senate bill No. 404 in the sixty-first Congress, and 3940 in the sixtieth Congress, is one of the latest attempts to secure from Congress a compulsory Sunday law, and commit the government of the United States to a course of religious legislation. With the exception of the penalties imposed, and the long list of excepted classes and items, thirty-three in all, the measure is very similar even in phraseology to the old Maryland Sunday law of 1723, which, by act of Congress in 1801, inadvertently no doubt, was incorporated into the laws of the District of Columbia, and which the District Court of Appeals, in a decision rendered January 14, 1908, set aside as "obsolete," and declared an "outgrowth of the system of

Similar to Maryland Sunday law of 1723.

people of the District: *Provided,* That persons who observe as a day of rest any other day in the week than Sunday shall not be held to have violated the provisions of this section if they observe as a day of rest one day in each seven, as herein provided.

Exemption for observers of another day.

SECTION 2. That it shall be unlawful for any person in said District on said day to engage in any circus, show, or theatrical performance: *Provided,* That the provisions of this Act shall not be construed so as to prohibit sacred concerts, nor the regular business of hotels and restaurants on said day; nor to the delivery of articles of food, including meats, at any time before ten o'clock in the morning of said day from June first to October first; nor to the sale of milk, fruit, confectionery, ice, soda, and mineral waters, newspapers, periodicals, cigars, tobacco, drugs, medicines, and

Sacred concerts permitted.

Other exceptions.

religious intolerance that prevailed in many of the colonies." See page 518.

As this bill, S. 3940 "with amendments," was originally introduced by Senator Johnston, of Alabama, May 1, 1908, and as passed by the Senate May 15 of that year, the proviso at the close of the first section exempting observers of another day, read as follows:

"*Provided,* That persons who are members of *a religious society,* who observe *as a Sabbath* any other day in the week than Sunday, shall not be liable to the penalties prescribed in this Act if they observe *as a Sabbath* one day in each seven, *as herein provided.*"

Sabbath observance enjoined.

This, together with the prohibition of labor at any trade or "*secular* calling," and the permission to hold "*sacred* concerts," very clearly showed the whole measure to be religious, and its primary object to be enforced Sabbath observance. The very phraseology of the proviso demonstrated this. The only way to avoid keeping "*as a Sabbath*" the day specified in the bill, was to keep some other day "*as a Sabbath.*" In the discussion of the bill in the Senate January 26, 27, 1910, before it passed that body the second time, the religious character of the measure was pointed out by different senators, and the phraseology of this proviso altered, as shown in the text, so as to make the measure appear less religious. But both its object and character remained the same. In its amended form the proviso was limited to the first section, whereas, as originally introduced it was added to section 3, and applied to the whole act; and as passed the second time, the fine and imprisonment imposed were raised from ten dollars and ten days to thirty dollars and thirty days.

A religious measure.

surgical appliances; nor to the business of livery stables, or other public conveyances, or the use of private conveyances; nor to the handling and operation of the United States mail.

SECTION 3. That any person or corporation who shall violate the provisions of this Act shall, on conviction thereof, be punished by a fine of not more than thirty dollars or by imprisonment in the jail of the District of Columbia for not more than thirty days, or by both such fine and imprisonment in the discretion of the court.

Penalty.

SECTION 4. That all prosecutions for violations of this Act shall be in the police court of the District of Columbia and in the name of the District.

In a brief "prepared on behalf of the Sunday Rest Committee of the District of Columbia"—a committee of preachers—by Lawyer E. Hilton Jackson, of Washington, D. C., and presented by him at the concluding hearing on the bill before the House District Committee March 16, 1910, the statement is made (page 16) that this proviso exempting observers of another day is "held to relieve the proposed legislation from all possible objection on religious grounds." But nothing demonstrates more clearly the fact that the whole measure is religious than this very proviso. The statement just quoted, as well as the proviso itself, is a tacit admission that without such a provision the proposed legislation would come in conflict with the religious practices and conscientious convictions of citizens of the District. This, therefore, demonstrates beyond all question that the measure itself enters the realm of conscience and religion, and is itself religious, and consequently unconstitutional and altogether out of place in a legislature commissioned and empowered to deal only with civil things.

Exemption clause shows character.

The title of the bill itself shows its object to be the "proper observance" of the *day* rather than the securing of mere physical rest to the laboring man, as is so frequently said to be the object of such legislation. The keeping of the day *as the Sabbath* is the real object of the bill. Who but God has the right to designate the day to be observed "as a Sabbath," or to say what is its "proper observance"? In all such legislation men put themselves in the place of God, and command their fellow-men to render to Cæsar that which belongs to God.

Title shows object.

No hearings were granted by the Senate District Committee on this bill before its passage by the Senate in either Congress, though

No hearings in Senate.

RECENT ATTEMPTS AT RELIGIOUS LEGISLATION IN CONGRESS.

1888-1910.

THE RECORD FOR TWENTY-TWO YEARS.

Nothing demonstrates more clearly the departure from the American and Christian principle upon which the government of the United States was founded,— that of religious liberty, or the total separation of church and state,— than the growing demand for national religious legislation, as shown by the large number of religious bills introduced into Congress during the last quarter of a century, or particularly since 1888. And, as the following list shows, this movement for the uniting of church and state in this government, is being carried forward, as it was in the Roman empire during the fourth and fifth centuries, largely through a demand for Sunday legislation. Of the seventy religious measures introduced, fifty-five relate to Sunday observance, thirty-nine of which are for a Sunday law for the District of Columbia. Following is the list:

Departure from American principle of government.

there was a hearing before a Senate sub-committee of two, April 15, 1908, on two other District Sunday bills previously introduced by Senator Johnston. After its introduction into the House, the House District Committee granted hearings on the bill each time, once February 15, 1909, and again March 8 and 16, 1910. Up to the close of the second session of the sixty-first Congress, July 1, 1910, neither the House Committee nor the House had taken any action upon it.

While, through provisos conditioning government appropriations to various expositions upon Sunday closing, Congress has, in response to religious pressure, committed itself to Sunday legislation, it has not as yet enacted a compulsory Sunday law. Having taken the first step, however, the next, logically, under like pressure, unless prevented by strong opposition and a recurrence to fundamental principles, must follow. The backward, downward course has already begun. In the "Christian nation" Supreme Court decision of February 29, 1892, and the Chicago World's Fair Sunday legislation by Congress following in the same year, the die of a union of church and state, and of that form of a union of church and state in which the ecclesiastical dominates the secular, was cast.

No compulsory Sunday law yet.

LIST OF RELIGIOUS MEASURES INTRODUCED IN CONGRESS SINCE 1888.

FIFTIETH CONGRESS — FIRST SESSION.

Blair Sunday-rest bill.

S. 2983. "To secure to the people the enjoyment of the first day of the week, commonly known as the Lord's Day, as a day of rest, and to promote its observance as a day of worship." Introduced by Senator Blair, of New Hampshire, May 21, 1888; referred to Committee on Education and Labor; hearing on bill December 13, 1888; report of hearing Miscellaneous Document No. 43; not reported out of committee. C. R. 19: 4455.

Blair Educational Amendment.

S. R. 86. "Proposing an amendment to the Constitution of the United States respecting establishments of religion and free public schools." Blair, of New Hampshire, May 25, 1888; ordered to lie on table; later referred to Committee on Education and Labor; hearing on measure February 15 and February 22, 1889; not reported. C. R. 19: 4615.

FIFTY-FIRST CONGRESS — FIRST SESSION.

Amended Blair Sunday-rest bill.

S. 946. "To secure to the people the privileges of rest and religious worship, free from disturbance by others, on the first day of the week." Blair, of New Hampshire, December 9, 1889; to Committee on Education and Labor; not reported. C. R. 21: 124.

Blair Educational Amendment.

S. R. 17. "Proposing an amendment to the Constitution of the United States respecting establishments of religion and free public schools." Blair, of New Hampshire, December 9, 1889; to Committee on Education and Labor; not reported. C. R. 21: 125.

Breckinridge District Sunday bill.

H. R. 3854. "To prevent persons from being forced to labor on Sunday" [in the District of Columbia]. W. C. P. Breckinridge, of Kentucky, January 6, 1890; to Committee on District of Columbia; hearing on bill before subcommittee, February 18, 1890; not reported. C. R. 21: 403.

FIFTY-SECOND CONGRESS — FIRST SESSION.

Sunday-closing of expositions.

H. R. 194. "To prohibit opening on Sunday any exhibition or exposition for which the United States government makes appropriations." Morse, of Massachusetts, January 5, 1892; to Committee on Judiciary; not reported. C. R. 23: 130.

Breckinridge Sunday bill.

H. R. 540. "To prevent persons from being forced to labor on Sunday in the District of Columbia." Breckinridge, of Kentucky, January 7, 1892; to Committee on District of Columbia; not reported. C. R. 23: 203.

NOTE.— S. stands for Senate; H. R. for House of Representatives; S. R. for Senate Resolution; H. J. Res. for House Joint Resolution; the numbers following these indicate the number of the bill; matter following numbers of bill gives title or description of bill; the name, date, committee, etc., following this indicate who introduced it, when introduced, committee to whom referred, fate of measure, and volume and page in "Congressional Record" where reference to bill may be found. C. R. 19: 4455 means "Congressional Record," volume xix, page 4455.

S. 2168. "To prohibit opening on Sunday any exhibition or exposition for which the United States government makes appropriations." Colquitt, of Georgia, February 11, 1892; to Committee on Education and Labor; not reported. C. R. 23: 1047.

S. 2994. "To prevent the sale or delivery of ice within the District of Columbia on the Sabbath day, commonly known as Sunday." McMillan, of Michigan, April 25, 1892; to Committee on District of Columbia; reported with amendments; not acted on. C. R. 23: 3607, 4480. Ice bill.

H. R. 8367. "Prohibiting the sale and delivery of ice within the District of Columbia on the Sabbath day, commonly known as Sunday." Hemphill, of South Carolina, April 25, 1892; to Committee on District of Columbia; reported back with amendments; passed House; not acted on in Senate. C. R. 23: 3639, 4480. Ice bill.

H. R. 7520. Sundry Civil bill, loaning $5,000,000 to Chicago World's Fair, conditioned on Sunday closing. Approved August 5, 1892. See page 370. Sunday-closing of Chicago World's Fair

H. R. 9710. "To aid in carrying out an act of Congress to provide for celebrating the discovery of America" [with proviso for closing Columbian Exposition on Sundays]. Reilly, of Pennsylvania, August 4, 1892; to Committee of the Whole House; passed House and Senate and received President Harrison's signature August 5, 1892. C. R. 23: 7040, 7064-7, 7086, 7102. Gift of $2,500,000.

FIFTY-THIRD CONGRESS — SECOND SESSION.

S. 56. "Proposing an amendment to the Constitution of the United States" [God in the Constitution]. Senator Frye, of Maine, January 25, 1894; to Committee on Judiciary; not reported. C. R. 26: 1374. God in the Constitution.

S. 1628. "To further protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." Gallinger, of New Hampshire, February 15, 1894; to Committee on District of Columbia; not reported. C. R. 26: 2211. To protect the day.

H. R. 6215. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." Morse, of Massachusetts, March 10, 1894; to Committee on District of Columbia; not reported. C. R. 26: 2827. For a day of rest and worship.

H. R. 6592. "For Sunday rest" [in District of Columbia]. Johnson, of North Dakota, April 5, 1894; to Committee on District of Columbia; not reported. C. R. 26: 3490.

S. 1890. "For Sunday rest in any territory, district, or place subject to the exclusive jurisdiction of the United States." Kyle, of South Dakota, April 12, 1894; to Committee on Education and Labor; not reported. C. R. 26: 3688. For Sunday rest

FIFTY-FOURTH CONGRESS — FIRST SESSION.

H. R. 167. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." Morse, of Massachusetts, December 6, 1895; to Committee on District of Columbia; not reported. C. R. 28: 48. For a day of rest and worship.

S. 1441. "To protect the first day of the week, commonly called Sunday, as a day of rest and worship in the District of Columbia." McMillan, of Michigan, January 9, 1896; to Committee on District of Columbia; not reported. C. R. 28: 526.

H. R. 6893. "For Sunday as a day of rest in the District of Columbia." Wellington, of Maryland, March 5, 1896; to Com-

mittee on District of Columbia; not reported. C. R. 28: 2516.

S. R. 2485. "To further protect the first day of the week as a day of rest in the District of Columbia." McMillan, of Michigan, March 11, 1896; to Committee on District of Columbia; not reported. C. R. 28: 2678.

S. 3136. "For Sunday as a day of rest" [in District of Columbia]. Kyle, of South Dakota, May 13, 1896; to Committee on District of Columbia; not reported. C. R. 28: 5154.

To regulate labor and business.

S. 3235. "To regulate labor and business in the District of Columbia." Kyle, of South Dakota, May 28, 1896; to Committee on District of Columbia; not reported. C. R. 28: 5827.

FIFTY-FOURTH CONGRESS — SECOND SESSION.

H. R. 9679. "To further protect the first day of the week as a day of rest in the District of Columbia." Washington, of Tennessee, December 16, 1896; to Committee on District of Columbia; not reported. C. R. 29: 229.

FIFTY-FIFTH CONGRESS — FIRST SESSION.

To further protect the day.

S. 920. "To further protect the first day of the week as a day of rest in the District of Columbia." McMillan, of Michigan, March 19, 1897; to Committee on District of Columbia; not reported. C. R. 30: 68.

H. R. 1075. "To further protect the first day of the week as a day of rest in the District of Columbia." Harmer, of Pennsylvania, March 19, 1897; to Committee on District of Columbia; not reported. C. R. 30: 91.

FIFTY-SIXTH CONGRESS — FIRST SESSION.

Sunday closing of the St. Louis Exposition.

H. R. 9829. "To provide for celebrating 100th anniversary of the purchase of the Louisiana territory in St. Louis." Lane, of Iowa, March 21, 1900; to Special Committee on Centennial of the Louisiana Purchase; amended and favorably reported; passed House Feb. 18, 1901, without Sunday-closing condition; referred to Senate Committee on Industrial Expositions; reported favorably (Senate Report 2382); passed Senate February 28, 1901, with Senator Teller's amendment: "That as a condition precedent to the payment of this appropriation the directors shall contract to close the gates to visitors on Sundays during the whole duration of the fair;" went to conference, House non-concurring in Sunday-closing amendment (H. R. Report 2976); went to second conference, House receding from non-concurrence, and both houses agreeing, March 1, 1901, to bill as passed by Senate. C. R. 34: 2872-4.

H. R. 10592. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen, of Maine, April 10, 1900; to Committee on District of Columbia; not reported. C. R. 33: 3995.

FIFTY-SEVENTH CONGRESS — FIRST SESSION.

Sunday closing.

S. 5334. "Requiring places of business in the Dist. of Columbia to be closed on Sunday." McMillan, of Michigan, April 19, 1902; to Com. on Dist. of Columbia; not reported. C. R. 35: 4422.

H. R. 13970. "Requiring places of business in the District of Columbia to be closed on Sunday." Jenkins, of Wisconsin, April 24, 1902; to Committee on District of Columbia; not reported. C. R. 35:4655.

H. R. 14110. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen, of Maine, April 30, 1902; to Committee on District of Columbia; not reported. C. R. 35:4905.

S. 5563. "To further protect the first day of the week as a day of rest in the District of Columbia." Dillingham, of Vermont, May 1, 1902; to Committee on District of Columbia; not reported. C. R. 35:4909.

FIFTY-EIGHTH CONGRESS — FIRST SESSION.

H. R. 4859. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen, of Maine, November 24, 1903; to Committee on District of Columbia; not reported. C. R. 37:472.

H. R. 11819. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Wadsworth, of New York, February 4, 1904; to Committee on District of Columbia; reported favorably; amended and passed House; referred to Senate Committee on District of Columbia; not reported. C. R. 38:1646, 4077, 4375, 4414.

FIFTY-NINTH CONGRESS — FIRST SESSION.

Sunday banking in post-offices.

H. R. 3022. "To prevent Sunday banking in post-offices in the handling of money-orders and registered letters." Sibley, of Pennsylvania, December 5, 1905; to Committee on Post-Offices and Post-Roads; not reported. C. R. 40:112.

S. 1653. "To prevent Sunday banking in post-offices in the handling of money-orders and registered letters." Penrose, of Pennsylvania, December 14, 1905; to Committee on Post-Offices and Post-Roads; reported adversely and indefinitely postponed. C. R. 40:385, 2747.

H. R. 10510. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen, of Maine, January 5, 1906; to Committee on District of Columbia; not reported. C. R. 40:447.

For Sunday-closing of Jamestown Exposition.

H. R. 12610. "To authorize the United States government to participate in the Jamestown Tercentennial Exposition." Maynard, of Virginia, January 20, 1906; to Committee on Industrial Arts and Expositions; reported with amendments, with proviso, "That as a condition precedent to the appropriations herein provided for, the Jamestown Exposition Company shall contract to close exhibits and places of amusement to visitors on Sundays;" did not come to vote. C. R. 40:1336, 5486, 5637.

H. R. 16483. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Wadsworth, of New York, March 9, 1906; passed House June 11, 1906, but not reported by Senate Committee. C. R. 40:2268, 3655, 7464, 8268-71, 8307.

H. R. 16556. "Prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heflin, of Alabama, March 12, 1906; not reported. C. R. 40:3711.

For Sunday-closing of Jamestown Exposition.

S. 5825. "To authorize the United States government to participate in the Tercentennial Exposition," with proviso, "That as a condition precedent to the payment of the appropriations herein provided for, the Jamestown Exposition Company shall contract to close exhibits and places of amusements to visitors on Sundays." Daniel, of Virginia, April 23, 1906; to select Committee on Industrial Expositions; reported with amendment, but not brought to vote. C. R. 40: 7589.

For Sunday-closing of Jamestown Exposition.

H. R. 19844. United States Sundry Civil bill, appropriating two hundred fifty thousand dollars to the Jamestown Tercentennial Exposition. June 29, 1906, House and Senate agreed to bill with following proviso: "That as a condition precedent to the payment of this appropriation in aid of said exposition, the Jamestown Exposition Company shall agree to close the grounds of said exposition to visitors on Sunday during the period of said exposition." C. R. 40: 9673-4.

FIFTY-NINTH CONGRESS — SECOND SESSION.

Sunday work in post-offices.

S. Res. 215. "That the Postmaster-General be directed to inform the Senate by what authority post-offices are required to be kept open on Sunday together with the regulation of Sunday opening, as to the extent of the business that may be transacted, and also what the provisions are for clerical help, and whether postal clerks and carriers are required to work more than six days per week." Burkett, of Nebraska, January 9, 1907; considered and agreed to. C. R. 41: 804.

SIXTIETH CONGRESS — FIRST SESSION.

"In God we trust."

H. R. 327. "To restore the inscription 'In God We Trust' upon the coins of the United States of America." O. M. James, of Kentucky, December 2, 1907; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42: 18.

"In God we trust."

H. R. 353. "Requiring the motto 'In God We Trust' to be inscribed on all forms of moneys hereafter issued by the United States." Sheppard, of Texas, December 2, 1907; to Committee on Coins, Weights, and Measures; not reported. C. R. 42: 19.

To protect the day.

H. R. 4897. "To further protect the first day of the week as a day of rest in the District of Columbia." Allen, of Maine, December 5, 1907; to Committee on District of Columbia; not reported. C. R. 42: 186.

Prohibiting labor on "the Sabbath day."

H. R. 4929. "Prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heflin, of Alabama, December 5, 1907; to Committee on District of Columbia; not reported. C. R. 42: 186.

S. 1519. "To prevent Sunday banking in post-offices in the handling of money-orders and registered letters." Penrose, of Pennsylvania, December 9, 1907; to Committee on Post-Offices and Post-Roads; not reported. C. R. 42: 209.

"In God we trust."

H. R. 11295. "Authorizing the continuance of the inscription of a motto ["In God We Trust"] on the gold and silver coins of the United States." Moore, of Pennsylvania, December 21, 1907; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42: 467.

To prohibit work.

H. R. 13471. "Prohibiting work in the District of Columbia on the first day of the week, commonly called Sunday." Lamar,

of Missouri, January 13, 1908; to Committee on District of Columbia; not reported. C. R. 42:666.

"In God we trust."

H. R. 13648. "Requiring the motto 'In God We Trust' to be inscribed on all coins of money hereafter issued by the United States, as formerly." Beale, of Pennsylvania, January 14, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:706.

Johnston District Sunday bill.

S. 3940. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Johnston, of Alabama, January 14, 1908; to Committee on District of Columbia; hearing on bill before Senate subcommittee, April 15, 1908; amended and reintroduced by Mr. Johnston, May 1, 1908, as S. 3940, with Calendar No. 605 [report No. 596] attached; reported favorably; passed Senate May 15, 1908; introduced in House May 16, 1908; hearing on bill before House District Committee, February 15, 1909; not reported by House Committee. C. R. 42:676, 5514, 6314, 6434.

"In God we trust."

H. R. 14400. "Requiring the motto 'In God We Trust' to be restored to certain coins." Ashbrook, of Ohio, January 20, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:899.

H. R. 15239. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Langley, of Kentucky, January 27, 1908; to Committee on District of Columbia; not reported. C. R. 42:1166.

"In God we trust."

H. R. 15439. "Providing for the restoration of the motto 'In God We Trust' on certain denominations of the gold and silver coins of the United States." Wood, of New Jersey, January 28, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:1257.

"In God we trust."

H. R. 16079. "Providing for the restoration of the motto 'In God We Trust' on certain denominations of the gold and silver coins of the United States." McKinney, of Illinois, February 3, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:1505.

"In God we trust."

H. R. 17144. "Providing for the restoration of the motto 'In God We Trust' on certain denominations of the gold and silver coins of the United States." Foster, of Illinois, February 14, 1908; to Committee on Coinage, Weights, and Measures; not reported. C. R. 42:2051.

Motto "In God we trust" restored to coins.

H. R. 17296. "Providing for the restoration of the motto 'In God We Trust' on certain denominations of the gold and silver coins of the United States." McKinley, of Illinois, February 17, 1908; to Committee on Coinage, Weights, and Measures; reported favorably; passed House March 16; referred to Senate Committee on Finance March 17; reported favorably; passed Senate May 13. C. R. 42:6189.

For the "proper observance" of Sunday in District.

H. R. 19965. "For the proper observance of Sunday as a day of rest" [in the District of Columbia]. Hay, of Virginia, March 27, 1908; to Committee on District of Columbia; not reported. C. R. 42:40, 58.

A bill prohibiting labor on all days.

S. 6535. "For the proper observance of Sunday as a day of rest in the District of Columbia" (first section did not mention Sunday, or first day of week, and so prohibited labor on all days). Johnston, of Alabama, April 7, 1908; to Committee on District of Columbia; hearing on this and the original S. bill No.

3940 before it was remodeled, before Senate subcommittee February 15, 1909; not reported. C. R. 42: 4458.

Billiard and pool bill.

S. 6853. "To amend act licensing billiard and pool tables in the District of Columbia," requiring that "all such places shall be closed during the entire twenty-four hours of each and every Sunday." Gallinger, of New Hampshire, April 28, 1908; to Committee on Dist. of Columbia; not reported. C. R. 42: 5324.

SIXTIETH CONGRESS — SECOND SESSION.

God in the Constitution.

S. R. 125. "Proposing an amendment to the Constitution acknowledging the Deity." Richardson, of New Jersey, February 4, 1909; to Committee on Judiciary; not reported. C. R. 43: 1827.

SIXTY-FIRST CONGRESS — FIRST SESSION.

God in the Constitution.

H. J. Res. 17. "Proposing an amendment to the Constitution of the United States, so that it shall contain a recognition of God, and it shall begin with the words 'In the name of God.'" Sheppard, of Texas, March 18, 1909; to Committee on Judiciary; hearing granted National Reformers before subcommittee, April 11, 1910; not reported. C. R. 44: 105.

Johnston District Sunday bill.

S. 404. "For the proper observance of Sunday as a day of rest in the District of Columbia." Johnston, of Alabama, March 22, 1909; to Committee on District of Columbia; not reported. C. R. 44: 135.

SIXTY-FIRST CONGRESS — SECOND SESSION.

H. R. 13876. "Requiring certain places of business in the District of Columbia to be closed on Sunday." Livingston, of Georgia, December 10, 1909; to Committee on District of Columbia; not reported. C. R. 45: 91.

Heflin bill turned down by Commissioners.

H. R. 14619. "Prohibiting labor on buildings, and so forth, in the District of Columbia on the Sabbath day." Heflin, of Alabama, December 14, 1909; to Committee on District of Columbia; adversely reported on by District Commissioners to House District Committee (see Washington "Star" and Washington "Times," February 17, 1910, and Washington "Post," February 18, 1910); not reported. C. R. 45: 135.

Johnston District Sunday bill reintroduced.

S. 404. Calendar No. 75, report No. 81. "For the proper observance of Sunday as a day of rest in the District of Columbia." Johnston, of Alabama, January 17, 1910; to Committee on District of Columbia; reported favorably by Senate Committee; amended and passed Senate January 27, 1910; introduced in House January 28, 1910; hearing before House Committee on District of Columbia March 8 and 16, 1910; not reported. C. R. 45: 681, 762, 921, 970, 1020-26, 1077-78, 1180.

A bill to make lawful what is already not unlawful.

H. R. 21475. "Declaring it to be lawful to play harmless athletics and sports in the District of Columbia on the first day of the week, commonly called Sunday." Coudrey, of Missouri, February 21, 1910; to Committee on District of Columbia; not reported. C. R. 45: 2234.

Post-office bill.

H. R. 26462. "Providing a weekly day of rest for certain post-office clerks and carriers." Bennet, of New York, June 1, 1910; to Committee on Post-Offices and Post-Roads; not reported. C. R. 45: 7444.

PART IV.

Court Decisions.

"The people of these United States are the rightful masters of both Congress and Courts, not to overthrow the Constitution, but to overthrow the men who pervert the Constitution. . . . If the policy of the government, upon the questions affecting the whole people, is to be irrevocably fixed by decisions of the Supreme Court the instant they are made, as in ordinary legislation between parties in personal actions, the people will have ceased to be their own rulers."
— *Lincoln.*

PRINCIPLE v. PRECEDENT.

Court decisions may be classed under two general heads, those based on principle, and those on precedent.

A principle is a fundamental truth; a comprehensive law or doctrine; a settled rule of action; a governing law of conduct. A precedent is an authoritative example for similar subsequent acts or decisions.

Principle and precedent defined.

No one need fear ever being led astray by adhering to a true principle. From the very nature of the case it cannot lead astray. The only danger lies in departing from it. A false premise, however logical subsequent reasoning, must necessarily lead to false conclusions.

Augustine furnishes an example of one who forsook a correct principle to follow blind and deceptive precedents. Here is his own explanation for it:

"I was formerly of the opinion that no one ought to be compelled to return to the bosom of the church, under the impression that we ought not to use any other arms than words; that our contest ought to be no other than argument; and that such only ought to be esteemed as a victory which is gained through the force of conviction; for otherwise those would become feigned Catholics who before were avowed heretics. But some of my companions have since pressed me closely, not with *reasons,* but with *facts,* which they quote to me in great numbers, whence I have been induced to adhere to their opinion. For they argue with me from the example of my own residence (Hippo), which, having formerly decided in favor of the heresy of Donatus, was afterwards restored to the Catholic unity by means of the decrees of the emperors." [1]

Where Augustine made his mistake.

But Augustine would better have adhered to his former opinion, based on good reasons, and ignored the precedents which infringed the principle. Had he done so, his name would not have come down to us as the founder of that theory which, Neander says, "contained the germ of the whole system of spiritual despotism, intolerance, and persecution, which ended in the tribunals of the Inquisition."

In embryo, founded the Inquisition.

In Sunday law decisions both types are represented, those based on precedent and those on principle.

1 "Clark's History of Intolerance," page 213.

December Term, 1849.

SUPREME COURT OF OHIO.

DECEMBER TERM, 1849.

PRESTON W. SELLERS v. GEORGE DUGAN.[1]

. . . . . .

Enactments making Sunday contracts illegal, rest on the ground that it is immoral.

CALDWELL, Justice, dissenting. . . . If an act, such as making a single contract on Sunday, that in its nature is not calculated to disturb the peace and quiet of the day, can be made the subject of legal supervision and penal enactment, *it can only be on the ground that it is abstractly wrong, immoral.* If the

Logical consequence.

legislature can punish one act of this kind, they can another, and their power to persecute, to punish for whatever they may consider abstractly wrong, is unlimited. It is the glory of our country that the right

America's glory.

of belief in any particular religious tenet without molestation on account thereof, *is granted to every one;*

Equal liberty extends to all.

but this principle can only be preserved by extending it equally to the unbeliever. It is the same great indivisible principle that alike protects humanity, the birth-right of the whole, which each with equal reason may claim, should he believe any religious creed whatever; or should he disbelieve the whole.

[1] 18 Ohio, 489. The majority of the Supreme Court of Ohio decided, in this case, that "under the act of 1831, 'for the prevention of immoral practices,' a sale on Sunday of four hundred bushels of corn, is void, and no action for damages can be sustained for the breach of such contract." The judgment of the Supreme Court of Brown county, which had decided to the contrary, was accordingly reversed. From this decision Mr. Justice Caldwell dissented. Dissenting opinions have been a prominent characteristic in decisions on the constitutionality of Sunday laws; and, as is evident from the Supreme Court decisions following, the point of contention seems to be whether religious precedents or American principles shall prevail as the rule of decision in our State courts. Thus far the former rule has largely been followed; but the decisions adopting the latter have been by far the most able and best reasoned opinions.

Religious precedents *v.* American principles.

The Ohio Supreme Court at this time held annual county sessions; hence the reference to "the Supreme Court of Brown county."

We have been referred to the decisions of the court for authority upon this subject. Those decisions are all made on statutes essentially differing from our own. We know that many authorities can be found, both ancient and modern, that have gone as far as this decision in enforcing the observance of the Sabbath. We do not propose to examine them, for two reasons : one is the one mentioned above, that the statutes on which they are made differ from ours. Another is, that the pernicious and ruinous consequences of enforcing religious principle by legal enactment have been so well tested, and are so apparent, that any decision of the kind should not be regarded. Indeed, if I were to attempt to present the error into which, I think, the court have fallen in this decision, in its strongest light, I would do it by a reference to the action of the courts and legislative bodies, not only in Europe, but in some parts of this country, in its early settlement, in attempting to enforce the observance of the Sabbath by law. It always has and always will produce a pharisaical and hypocritical observance of a religious duty, and creates a spirit of cen-*sorious bigotry, and tends powerfully to destroy every religious feeling of the heart.

Other decisions.

Pernicious consequences of enforcing religious observances.

Parallels to decision of the court.

Effect of enforcing religious observances. [*497]

I know of but one reported decision in the State ; that is the case of Swisher's Lessee *v.* Williams's Heirs, Wright's Reports, 754. The court there say : "The objection that the deed was executed on Sunday will not avail you. Both parties partook equally of the sin of violating the Sabbath, and the law does not require of us to enable either party to add to the sin, by breaking the faith pledged on that day, and commit a fraud out of assumed regard for the Sabbath day." This decision is directly in point, and, I think, good law. I think the decision of the court on the circuit was right, and should have been affirmed.

A previous decision.

Directly to the point

January Term, 1850.

SUPREME COURT OF ARKANSAS.

JANUARY TERM, 1850.

SHOVER v. THE STATE.[1]

Christianity claimed to be a part of our common law.

The Christian religion is recognized as constituting part of the common law; its institutions are entitled to profound respect, and may well be protected by law.

The Sabbath, properly called the Lord's day, is amongst the first and most sacred institutions of Christianity, and the act for the punishment of Sabbath-breaking (Digest, chapter 51, part 7, article 5, page 369) is not in derogation of the liberty of conscience secured to the citizen by the third section of the Declaration of Rights.

In an indictment under the above act for keeping open a grocery on Sunday, it is not necessary to aver that it was kept open with any criminal intent — keeping it open on that day is the gist of the offense.

When the fact of keeping the grocery open on the Sabbath is established, the law presumes a criminal intent, and the defendant must excuse himself by showing that charity or necessity required it.

Keeping a grocery open on Sunday criminal.

Keeping a grocery door open on the Sabbath is a temptation to vice, and therefore criminal.

In such an indictment it is not necessary to aver that the person charged with keeping open the grocery is the owner of it, but if alleged, it must be proven.

Any person who has control of a grocery, may be indicted for keeping it open on Sunday, whether he be owner or not.

APPEAL FROM THE HEMPSTEAD CIRCUIT COURT.

. . . . . .

MR. CHIEF JUSTICE JOHNSON delivered the opinion of the court.

The indictment in this case is based upon the fifth section, chapter fifty-first, Digest. That section

[1] 5 English, 259. This decision and the State *v.* Ambs, *post* page 425, are inserted as representative of those upholding the constitutionality of Sunday laws. In the celebrated New York Supreme Court decision on Sunday laws, Mr. Justice Allen says that "in most States the [Sunday] legislation has been upheld by the courts and sustained by well-reasoned and able opinions,"— citing these decisions among others, as the leading decisions. It was originally intended to insert in this

Sunday legislation upheld by courts.

Arkansas Sunday law.

enacts that "Every person who shall, on Sunday, keep open any store, or retail any goods, wares, or merchandise, or keep open any dram-shop or grocery, or sell or retail any spirits or wine, shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than ten dollars nor more than twenty."

Law objected to as unconstitutional.

The first objection taken is to the indictment, and is predicated upon the supposed unconstitutionality of the act by which the offense is created. If the act is unauthorized by the Constitution, it must arise from the fact that it interferes with the rights of conscience which are secured by all the Declaration of Rights. A portion of those rights consists in a freedom to worship Almighty God according to the dictates of every one's conscience, and in not being compellable to attend, erect, or support, any place of worship, or to maintain any ministry against their consent. The act in question cannot, with any degree of propriety, be said to trench upon any one of the rights thus secured. By reserving to every individual the sacred and indefeasible rights of conscience, the convention most certainly did not intend to leave it in his power to do such acts as are civil in *themselves and necessarily calculated to bring into contempt the most venerable and sacred institutions of the country. Sunday, or the Sabbath, is properly and emphatically called the Lord's day, and is one amongst the first and most sacred institutions of the Christian religion. This system of religion is recog-

Objection overruled.

The court claims that the convention did not intend religious equality for all.

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work the New York decision also; but the New York Supreme Court not being a court of last resort, and as the decision itself would take about fifty pages, it is omitted. The decision is, however, probably the most able and exhaustive opinion presenting that view of the question. See 33 Barbour, 548-578. It is a noticeable fact that all of these decisions base the constitutionality of Sunday legislation upon the alleged fact that Christianity is a part of our common law, which, as shown in the Ohio Supreme Court decision (page 419) and elsewhere, is a fallacy.

All institutions in any way connected with Christianity, said to be entitled to state protection.

nized as constituting a part and parcel of the common law, and as such all the institutions growing out of it, or in any way connected with it, in case they shall not be found to interfere with the rights of conscience, are entitled to the most profound respect, and can rightfully claim the protection of the law-making power of the State. (See the case of Vidal *et al. v.* Gerard's Executors, 2 Howard's Reports, 198.) We think it will readily be conceded that the practice against which the act is directed, is a great and crying vice, and that, in view of its exceedingly deleterious effects upon the body politic, there cannot be a doubt that it falls appropriately under the cognizance of the law-making power.

Gist of the offense.

The indictment is believed to have been drawn with technical accuracy, and to contain all the averments necessary under the statute to a full description of the offense. The very gist of the offense charged in the first count is the keeping open the grocery on Sunday, and it was not necessary that any criminal intent should have been alleged; as, upon the finding of the fact charged, the law presumes the intent, and unless the defendant is prepared to show that no such intent existed — as that it occurred in the exercise of acts of charity, or that, as a matter of necessity, he could not avoid it — the offense will be fully made out, and consequently nothing can remain to be done but to fix the penalty. The nature and tendency of the act prohibited furnish ample reason why the Legislature did not expressly require the intent to be expressed in the indictment as constituting a material part of the description of the offense. The act of keeping open a grocery on Sunday, is not, in itself, innocent or even indifferent; but it is, on the contrary, highly vicious and demoralizing in its tendency, as it amounts to a general invitation to the community to

Keeping open a grocery on Sunday said to be "highly vicious and demoralizing."

enter and indulge in the intoxicating cup, thereby *shocking their sense of propriety and common decency, and bringing into utter contempt the sacred and venerable institution of the Sabbath. It is not simply the act of keeping open a grocery, but the keeping of it open on Sunday, that forms the head and front of the offense; and when it is alleged to have been done on *that day*, the description is perfect.[1] [*264]

Not the *act*, but the *disregard of Sunday*, that forms "the head and front of the offense."

If the objection to the first count be admissible as failing to give a full and perfect description of the offense, we can perceive no good reason why it should not apply with equal force to the second, as it is silent also as to the intent. The charge in the latter count is, that the defendants sold spirits on Sunday, and it is wholly silent as to the intent with which the act was done. It certainly would not be contended that an indictment for selling spirits on Sunday should further aver that it was sold with intent to have it drunk. The Legislature did not conceive the act of selling to be any worse in point of criminality than that of keeping the grocery open, and consequently they have placed them both upon precisely the same footing. They have the unquestionable right, so long as they keep themselves within the pale of the Constitution, to command the performance of such acts as are right, and to prohibit such as they may conceive,

Charge in second count.

[1] In this decision the object of Sunday laws is forcibly expressed. The intention is to guard the sanctity of that day. And, although, as in this decision, the claim is made that "all the institutions growing out of," "or in any way connected with," the Christian religion, are entitled to state protection,— and this would include baptism, the Lord's supper, etc., as well as the so-called Lord's day,— yet it is constantly denied that Sunday legislation is religious legislation. No matter how many Sabbatarians go to jail and have their property taken away in fines, still it is claimed that these laws are "civil regulations" for the preservation of the public health by keeping people from working too hard! From this decision it is plain that it is not the deed but the day on which the deed is done that determines the offense under Sunday laws.

Object of Sunday laws.

Power of Legislature.

in their wisdom, to be wrong; and their right is equally indisputable to say whether the intention shall be preserved from the mere act prohibited, or whether, in addition to such act, the State shall also show the intent which prompted its commission.

Sufficiency of testimony.

The next objection relates to the sufficiency of the testimony to warrant the conviction. It is manifest from the whole tenor of the evidence as exhibited by the bill of exceptions, that both parties, as well the State as the defendant, considered it essential to a conviction that the ownership of the grocery should have been proven before the jury. This the statute did not require; but, having unnecessarily averred the fact of ownership, it devolved upon the State to prove it in order to authorize a conviction. The act merely forbids the keeping of a grocery open on Sunday. It certainly cannot be material whether it shall be done by the party having the legal title, or [*265] by any other *individual having the control of the establishment at the time of the commission of the alleged offense. If it were incumbent upon the State to show title to the grocery before a conviction could be had for keeping it open on Sunday, it would, in the very nature of things, be utterly impossible, in many cases, to effectuate the objects of the law. The true question, therefore, under the statute is not, Who is the owner of the grocery? but, Who is shown to have had the control of it at the time of the commission of the act? The State, in this case, did introduce some slight circumstances tending to establish the allegation of ownership, but utterly failed to prove that the defendant had been guilty of keeping the grocery open on Sunday.

Judgment of the court.

The judgment of the Circuit Court of Hempstead county is, therefore, reversed, and the cause remanded with instructions to proceed therein according to law, and not inconsistent with this opinion.

SUPREME COURT OF OHIO.

December Term, 1853.

DECEMBER TERM, 1853.

HIRAM BLOOM v. CORNELIUS RICHARDS.

THURMAN, Justice. . . . The English common law, *so far as it is reasonable in itself, suitable to the condition and business of our people, and consistent with the letter and spirit of our federal and State Constitutions and statutes*, has been and is followed by our courts, and may be said to constitute a part of the common law of Ohio. But wherever it has been found wanting in either of these requisites, our courts have not hesitated to modify it to suit our circumstances, or, if necessary, to wholly depart from it. Lessee of Lindsley *v.* Coates,[1] 1 Ohio, 243 ; Ohio Code, 116.

How far the English common law is to be recognized here.

Christianity, then, being a part of the common law of England,[2] there was some, though insufficient, foun-

[1] In this decision, the court said: "It has been repeatedly determined by the courts of this State that they will adopt the principles of the common law as the rules of decision, so far only as those principles are adapted to our circumstances, state of society, and form of government."

[2] Even the concession that Christianity was rightfully a part of the common law of England, was strongly combated by Jefferson. Nevertheless, that Christianity is now universally *recognized* as constituting a part of the English common law, cannot be denied ; but, on the other hand, it cannot be denied, either, that *it came to be recognized contrary to the principles of the common law.* Jefferson's comments show this very plainly. In America, however, Christianity forms no part of the common law, because state Christianity has been superceded by religious liberty — the equality of all religions. This liberty, according to the "Century Dictionary," is "the right of freely adopting and professing opinions on religious subjects, and of worshiping or refraining from worship according to the dictates of conscience, without external control ;" and this liberty is a right, not simply a privilege. The American government recognizes the self-evident truth that "all men are created equal ;" that governments are instituted for the protection of all alike,

Christianity and the common law of England.

America's new system.

All men equal.

Man not accountable to any individual for opinion.

whether religious or non-religious; and that man is accountable to God alone for matters of opinion. The principles of Christianity were never intended to be *forced* upon men. Therefore, engrafting Christianity upon the common law was not only contrary to the principles of the common law, but was also contrary to the principles of Christianity itself. In a letter to Major John Cartwright, Jefferson wrote as follows:

Usurpation of English judges.

"I was glad to find in your book a formal contradiction, at length, of the judiciary usurpation of legislative powers, for such the judges have usurped in their repeated decisions that Christianity is a part of the common law. The proof of the contrary, which you have adduced, is incontrovertible; to wit, that the common law existed while the Anglo-Saxons were yet pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. But it may amuse you to show when and by what means they stole this law in upon us. In a case of *quare impedit* in the Year Book 34th year Henry VI, folio 38 (anno 1458), a question was made how far the ecclesiastical law was to be respected in a common law court. And Prisot, Chief Justice, gave his opinion in these words: 'A tiels leis que ils de seint eglise ont en *ancien scripture*, covient à nous à donner credence; car ceo common ley sur quel touts manners leis sont fondés: et auxy, sin, nous sumus obligés de conustre lour ley de seint eglise: et semblablement ils sont obligés de conustre nostre ley; et, sin, si poit apperer or à nous que l'evesque ad fait come un ordinary fera en tiel cas, adong nous devons ceo adjuger bon, ou auterment nemy,' etc. [For translation, see *ante* page 210, note 1.] See third chapter; Fitzherbert's Abridgment, *quare impedit*, 89; Brooke's Abridgment, *quare impedit*, 12. Finch, in his first book, chapter 3, is the first afterwards who quotes this case and mistakes it thus: 'To such laws of the church as have warrant in *Holy Scripture*, our law giveth credence,' and cites Prisot; mistranslating '*ancien scripture*' into '*Holy Scripture*.' Whereas Prisot palpably says, 'To such laws as those of holy church have in *ancient writing*, it is proper for us to give credence;' to wit, to their *ancient written* laws. This was in 1613, a century and a half after the dictum of Prisot. Wingate, in 1658, erects this false translation into a maxim of the common law, copying the words of Finch, but citing Prisot. Wingate's Maxims, 3. And Sheppard, title 'Religion,' in 1675, copies the same mistranslation, quoting the Year Book, Finch, and Wingate. Hale expresses it in these words: 'Christianity is parcel of the laws of England.' 1 Ventris's Reports, 293; 3 Keble's Reports, 607. But he quotes no authority.

How Christianity was grafted on the common law.

Finch's mistranslation.

Statements of others.

Echoings and re-echoings of the statements.

"By these echoings and re-echoings from one to another, it had become so established in 1728, that in the case of King *v.* Woolston, 2 Strange, 384, the court would not suffer it be to debated whether to write against Christianity was punishable in the temporal court at common law. Wood, therefore, 409, ventures still to vary the phrase, and say that all blasphemy and profaneness are offenses by the common law; and cites

dation for the saying of Chief Justice Best, above quoted.[1] But the Constitution of Ohio having de-

Foundation insufficient.

2 Strange. Then Blackstone, in 1763, iv, 59, repeats the words of Hale, that 'Christianity is part of the laws of England,' citing Ventris and Strange. And, finally, Lord Mansfield, with a little qualification, in Evans's case, in 1767, says that 'the essential principles of revealed religion are part of the common law.' Thus engulfing Bible, Testament, and all, into the common law, without citing any authority. And thus we find this chain of authority hanging link by link, one upon another, and all ultimately on one and the same hook, and that a mistranslation of the words '*ancien scripture*,' used by Prisot. Finch quotes Prisot; Wingate does the same. Sheppard quotes Prisot, Finch, and Wingate. Hale cites nobody. The court in Woolston's case cites Hale. Wood cites Woolston's case. Blackstone quotes Woolston's case and Hale; and Lord Mansfield, like Hale, ventures it on his own authority. Here I might defy the best-read lawyer to produce another scrip of authority for this judiciary forgery; and I might go on further to show how some of the Anglo-Saxon priests interpolated into the text of Alfred's laws, the twentieth, twenty-first, twenty-second, and twenty-third chapters of Exodus, and the fifteenth of the Acts of the Apostles, from the twenty-third to the twenty-ninth verses. But this would lead my pen and your patience too far. What a conspiracy this, between church and state!" "Works of Thomas Jefferson," volume vii, page 359 *et seq.* See *ante* page 208 *et seq.*

Summary of authorities.

What a conspiracy between church and state!

[1] In the paragraph to which reference is here made, Judge Thurman declared: "I am aware that in Smith *v.* Sparrow, 12 English Common Law, 254, Chief Justice Best said 'that he should have considered that if two parties act so indecently as to carry on their business on a Sunday, if there had been no statute on the subject, neither could recover.' But this was a mere dictum, the unsoundness of which is rendered apparent by a multitude of authorities. The Chief Justice cited no case in its support, and I have been unable to discover a single one to uphold it. Very rarely has it been pretended, even in argument, that a contract, entered into on a Sunday, is, for that reason, void at the common law; and those who have so pretended, placed their chief, if not sole, reliance upon the saying of Lord Coke, that 'the Christian religion is part of the common law;' and upon what appears in 2 Coke's Institutes, 220, where, after citing a Saxon law of King Ethelstan, in these words, 'Die autem dominico nemo mercaturam facito; id quod si quis egerit, et ipsa merce, et triginta præterea solidis mulctator,' he adds: 'Here note, by the way, that no merchandizing should be on the Lord's day.' But, after considering these very observations, Lord Mansfield, in Drury *v.* Defontaine, 1 Taunton's Reports, 135, said that 'it does not appear that the common law ever considered those contracts as void which were made on Sunday.' And, accordingly, he gave a judgment for the price of a

Dictum of Chief Justice Best.

Its unsoundness apparent.

Pretensions based on Lord Coke's statement.

Lord Mansfield's admission.

Human rights.

No human authority can interfere with rights of conscience.

No religious preference to be given.

Christianity not a part of our law.

Rights, not toleration, is the American theory.

clared "that all men have a natural and indefeasible right to worship Almighty God according to the dictates of conscience; that no human authority can, in any case whatever, control or interfere with the rights of conscience; that no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; and that no preference shall ever be given, by law, to any religious society or mode of worship, and no religious test shall be required as a qualification to any office of trust or profit," it follows that neither Christianity, nor any other system of religion, is a part of the law of this State. We sometimes hear it said that all religions are tolerated in Ohio; but the expression is not strictly accurate.[1] Much less accurate is it to say that one religion is a part of our law and all others only tolerated. It is not mere toleration that every individual has here in his belief or disbelief. He reposes not upon the leniency of the government, or the liberality of any class or sect of men, but upon his natural, indefeasible rights of conscience, which, in the language of the Constitution, are beyond *the

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horse sold on that day. That he was right, is apparent from numerous cases, among which are Comyns *v.* Boyer, Croke's Reports (Elizabeth), 485; Rex *v.* Brotherton, 1 Strange's Reports, 702; the King *v.* Whitenash, 7 Barnwell and Cresswell's Reports, 596; same case, 14 English Common Law, 100; and Bloxsome *v.* Williams, 3 Barnwell and Cresswell's Reports, 232; same case, 10 English Common Law, 60. Indeed, so uniform are the authorities that Redfield, Justice, in Adams *v.* Gay, 19 Vermont, 365, said, in effect, that no case could be found holding a contract to be void at common law because executed on a Sunday. This remark, if not literally true, is so nearly so that, perhaps, the only case that seems opposed to it is Morgan *v.* Richards, decided in one of the inferior courts of Pennsylvania." 2 Ohio State, 389.

Decisions unanimous.

Declaration of United States Senate.

Interesting note.

[1] On this point the United States Senate says: "*What other nations call religious toleration, we call religious rights. They are not exercised by virtue of governmental indulgence, but as rights, of which government cannot deprive any portion of citizens, however small. Despotic power may invade those rights, but justice still confirms them.*" See an interesting note on this question, *ante* page 242, note 2.

control or interference of any human authority. We have no union of church and state, nor has our government ever been vested with authority to enforce any religious observance, simply because it is religious.

We have no union of church and state.

Government no authority to enforce any religious observance.

Of course, it is no objection, but on the contrary, is a high recommendation, to a legislative enactment, based upon justice or public policy, that it is found to coincide with the precepts of a pure religion; but the fact is nevertheless true, that the power to make the law rests in the legislative control over things temporal, and not over things spiritual. Thus the statute upon which the defendant relies, prohibiting common labor on the Sabbath, could not stand for a moment as a law of this State, if its sole foundation was the Christian duty of keeping that day holy, and its sole motive to enforce the observance of that duty.[1] For no power over things merely spiritual has ever been delegated to the government; while any preference of one religion over another, as the statute would give upon the above hypothesis, is directly prohibited by the Constitution.

Religious laws unconstitutional.

[1] On this point Mr. Rufus King, in his argument in the case of Minor *et al. v.* Board of Education of Cincinnati *et al.*, before the Superior Court of Cincinnati, said: "It is extraordinary that a man of such ability as the Judge [Hon. Allan G. Thurman] who delivered the decision in both cases [Bloom *v.* Richards, 2 Ohio State, 387, and Mc Gatrick *v.* Wason, 4 Ohio State, 566] should have failed to catch the salient hint so quickly taken by Judge Caldwell, dissenting in 18 Ohio, 489 [see *ante* pages 412, 413], and Judge Scott, in 9 Ohio State, 439, from the title and proviso of the act. He hastily overlooked the fact that the very title of the act is to prevent 'immoral practices,' and that the proviso exempts only 'those who do *conscientiously* observe the seventh day of the week *as the Sabbath*.' Why are they exempted? — why, but because they religiously observe another 'Sabbath'? Why, then, does the law of Ohio enforce the observance of Sunday? Manifestly the motive is religious. Without a doubt, it is reverence for that day as the Christian Sabbath. Stranger still was the learned Judge's oversight in failing to observe that this same 'Act for the prevention of immoral practices,' in another section, makes it penal to 'profanely swear by

Ohio Sunday law religious.

Other laws religious.

Language of modern English decisions.

"But to allow men to make bargains on the Sabbath is to let them desecrate that holy day, and it should not be granted that the legislature would suffer that." This is the language of the modern English cases, and perhaps it is consistently used in a country where Christianity is a part of the law, and in which there is an established church, and an omnipotent Parliament. But the General Assembly of Ohio is not, as we have shown, a guardian of the sanctity of any day. If it may protect the first day of the week from desecration because it is the Christian Sabbath, it may, in like manner, protect the sixth day because it is the holy day of the *Mahometan, and the seventh day because it is the Sabbath of the Jew and Seventh-day Baptist. Nay, more, it may protect the various festival days which, by some of the churches, are considered scarcely less sacred than the Sabbath day.

Government not the guardian of the sanctity of any day.

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The Sabbath of the Christian has no right to preference over that of any other religion.

. . . . . .

the name of God, Jesus Christ, or the Holy Ghost.' Here he would have found not only the motive and enforcement of a religious duty because it is Christian, but a recognition of the doctrine of the trinity itself." "Arguments in favor of the Bible in the Public Schools," page 135.

In the decision of Mr. Justice Scott, referred to above, in which the Sunday law of Canton, Ohio, was declared void, and which received the unanimous approval of the court, it is declared: "The penalty imposed by this section *clearly indicates* the general policy of *discriminating between secular days and Sundays*, and of regarding the latter as a day of rest, upon which *common* labor, sports, and the employments therein named, are prohibited. But the *exceptions* which it contains are *equally expressive* of state policy. The statute proceeds on the principle that works of *necessity* may be performed on any day; that 'it is lawful to do good *even on the Sabbath day;*' and upon the further principle that *persons who conscientiously observe another day of the week as the Sabbath*, shall not be required to abstain from employments, otherwise lawful, on Sunday." City of Canton *v.* Nist, 9 Ohio State, 442.

Ohio religious law discriminates between days.

It regards Sunday as sacred.

Professor A. H. Lewis, in the preface to his "Critical History of Sunday Legislation" (pages viii, ix), says:

Claim that Sunday laws are not based on religion contradicted by all history.

"Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries.

SUPREME COURT OF MISSOURI.

October Term, 1854.

OCTOBER TERM, 1854.

THE STATE, RESPONDENT, v. AMBS, APPELLANT.[1]

* * * * * * *

The main question argued in the briefs of the counsel in this case was, the constitutionality of the law exacting the observance of Sunday as a day of rest. It was maintained for the appellant, that the

Constitutionality of Sunday laws the main question.

Every Sunday law sprang from a religious sentiment. Under the pagan conception, the day was to be 'venerated' as a religious duty owed to the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was obtained for Sunday because the Sabbath had been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it. There is no meaning in the statutes prohibiting 'worldly labor,' and permitting 'works of necessity and mercy,' except from the religious standpoint. There can be no 'worldly business,' if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge."

Basis of every Sunday law.

Evidence in the laws themselves.

The claim is a shallow subterfuge.

Therefore, if a Sunday law could not constitutionally "stand for a moment" as a law of Ohio (or of any other State), if its sole foundation is religious obligation, and as all history and a critical examination of the statutes themselves show most conclusively that their sole foundation is religious obligation (as evidenced by the above quotations), the inevitable conclusion is that Sunday laws cannot constitutionally "stand for a moment" in any State of the Union.

Hence, all Sunday laws are unconstitutional.

[1] 20 Missouri, 214. The case was an appeal from the St. Louis Criminal Court to the Supreme Court of the State. Judge Scott delivered the opinion of the court.

laws enjoining an abstinence from labor on Sunday, under a penalty, and prohibiting the opening of ale and beer houses, and selling intoxicating liquors on that day, were dictated by religious motives, and consequently could not be sustained, being inconsistent with the State Constitution, which ordains that all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can be compelled to erect, support, or attend any place of worship; that no human authority can control or interfere with the rights of conscience; that no person can ever be hurt, molested, or restrained in his religious professions or sentiments, if he do not disturb others in their religious worship; that no preference can ever be given by law to any sect or mode of worship.

Claimed to be inconsistent with Constitution.

All preference unconstitutional.

The statute compelling the observance of Sunday, as a day of rest from worldly labor, expressly provides that it shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observed such Sabbath.

Exemption made.

Those who question the constitutionality of our Sunday laws seem to imagine that the Constitution is to be regarded as an instrument framed for a State composed of strangers collected from all quarters of the globe, each with a religion of his own, bound by no previous social ties, nor sympathizing in any common reminiscences of the past; that, unlike ordinary laws, it is not to be construed in reference to the state and condition of those for whom it was intended, but that the words in which it is comprehended are alone to be regarded, without respect to the history of the people for whom it was made.[1]

Construction of our Constitutions.

[1] Just the opposite of this is true. Those who question the constitutionality of our Sunday laws, believe that our Constitutions *are* to be construed in reference to the state and condition of those for whom they

Interpretation of Constitution.

It is apprehended, that such is not the mode by which our organic law is to be interpreted. We must regard the people *for whom it was ordained. It [*217] appears to have been made by Christian men. The Constitution, on its face, shows that the Christian religion was the religion of its framers. At the conclusion of that instrument, it is solemnly affirmed by its authors, under their hands, that it was done in the year of our Lord one thousand eight hundred and twenty — a form adopted by all Christian nations, in solemn public acts, to manifest the religion to which they adhere.

Argument for state aid to religion.

Long before the convention which framed our Constitution was assembled, experience had shown that the mild voice of Christianity was unable to secure the due observance of Sunday as a day of rest. The arm of the civil power had interposed.[1] The con-

were intended, and that the history of our people and institutions is a powerful confirmation of the wording of our fundamental charters themselves. The wording of our Constitutions, the history of our nation, the teachings of our political philosophers,— all unite in declaring that "the words in which they are comprehended" mean just what they say; and the attempt to annul the provisions of our Constitutions for religious liberty and equality by establishing religious preferences, is a flagrant departure from the true American political system.

They mean what they say.

Flagrant departures from American polity.

[1] But this interposition on the part of the civil power is just what our American system has been protesting against. As Madison says, "We are teaching the world the great truth . . . that religion flourishes in greater purity without, than with, the aid of government." *Ante* page 203. Jefferson, too, says the precepts of the gospel were "intended by their benevolent Author as obligatory only *in foro conscientiæ*." And the report of the United States Senate declares that "our Constitution recognizes no other power than that of persuasion for enforcing religious observances." *Ante* page 244. So it is the upholders of the constitutionality of Sunday laws — those who wish to force upon others the institution of the Christian religion, not the advocates of religious liberty — that are departing so radically from American principles. It is impossible to harmonize Sunday legislation with American institutions. Even in England the most able thinkers, the leading political philosophers, also hold Sunday legislation to be incompatible with liberty. Mr. John Stuart Mill says:

Religion purer without state aid than with it.

Persuasion the only legitimate mode of enforcing religious observances.

Sunday-law arguments.

vention sat under a law exacting a cessation from labor on Sunday (1 Edward's Compilation, 302). The journal of the convention will show that this law was obeyed by its members as such, by adjournments from Saturday until Monday. In the tenth section of the fourth article of the Constitution it is provided that if the Governor does not return a bill within ten days (Sundays excepted), it shall become a law without his signature. Although it may be said that this provision leaves it optional with the Governor whether he will consider bills or not on Sunday, yet regard

Sunday laws infringe liberty.

"Another important example of illegitimate interference with the rightful liberty of the individual, not simply threatened, but long since carried into triumphant effect, is Sabbatarian legislation."

And in reference to laws forbidding Sunday pastimes, Mr. Mill says:

"The only ground, therefore, on which restrictions on Sunday amusements can be defended, must be that they are religiously wrong: a motive of legislation which can never be too earnestly protested against. 'Deorum injuriæ Diis curæ.' It remains to be proved that society or any of its officers holds a commission from on high to avenge any supposed offense to Omnipotence, which is not also a wrong to our fellow-creatures. The notion that it is one man's duty that another should be religious, was the foundation of all the religious persecutions ever perpetrated, and if admitted, would fully justify them. Though the feeling which breaks out in the repeated attempts to stop railway traveling on Sunday, in the resistance to the opening of museums, and the like, has not the cruelty of the old persecutors, the state of mind indicated by it is fundamentally the same. It is a determination not to tolerate others in doing what is permitted by their religion, because it is not permitted by the persecutor's religion. It is a belief that God not only abominates the act of the misbeliever, but will not hold us guiltless if we leave him unmolested." "On Liberty," chapter 4, paragraph 19.

Cannot be too strongly protested against.

Foundation of all religious persecutions.

A statement of the case.

And Lord Macaulay gives us the following truths concerning the nature of Christianity:

Nature of Christianity.

"The real security of Christianity is to be found in its benevolent morality; in its exquisite adaptation to the human heart; in the felicity with which its scheme accommodates itself to the capacity of every human intellect; in the consolation which it bears to the house of mourning; in the light with which it brightens the great mystery of the grave. To such a system it can bring no addition of dignity or of strength, that it is part and parcel of the common law. It is not now for the first time left to rely on the force of its own evidences and the attractions of its own beauty."

State aid honors it not.

being had to the circumstances under which it was inserted, can any impartial mind deny but that it contains a recognition of the Lord's day, as a day exempt by law from all worldly pursuits? The framers of the Constitution, then, recognized Sunday as a day to be observed, acting themselves under a law which exacted a compulsive observance of it. If a compulsive observance of the Lord's day, as a day of rest, had been deemed inconsistent with the principles contained in the Constitution, can anything be clearer than, as the matter was so plainly and palpably before the convention, a specific condemnation of the Sunday law would have been ingrafted upon it? So far from it, Sunday was recognized as a day of rest, when, at the same time, a cessation from labor on that day was coerced by a penalty. They, then, who ingrafted on our Constitution the prin-*ciples of religious freedom therein contained, did not regard the compulsory observance of Sunday as a day of rest, a violation of those principles. They deemed a statute compelling the observance of Sunday necessary to secure a full enjoyment of the rights of conscience. How could those who conscientiously believe Sunday is hallowed time, to be devoted to the worship of God, enjoy themselves in its observance amidst all the turmoil and bustle of worldly pursuits, amidst scenes by which the day was desecrated, which they conscientiously believed to be holy? The Sunday law was not intended to compel people to go to church, or to perform any religious act, as an expression of preference for any particular creed or sect, but was designed to coerce a cessation from labor, that those who conscientiously believed that the day was set apart for the worship of God, might not be disturbed in the performance of their religious duties. Every man is free to use the day for the purpose for which it is set apart, or not, as he pleases. If he

Framers of Constitution recognized Sunday as a day of rest.

[*218]

A questionable statement.

Peculiar liberty.

sees proper to devote it to religious purposes, the law protects him from the disturbance of others; if he will not employ himself in religious duties, he is restrained from interrupting those who do. Thus the law, so far from affecting religious freedom, is a means by which the rights of conscience are enjoyed. It cannot be maintained that the law exacting a cessation from labor on Sunday compels an act of religious worship.[1] Because divines may teach their churches that the reverential observance of the Lord's day is an act of religious worship, it by no means follows that the prohibition of worldly labor on that day was designed by the General Assembly as an act of religion. Such an idea can only be based on the supposition of an entire ignorance in the Legislature of the nature of the worship which God exacts from his creatures. A compliance with the law, induced by a fear of its penalties, could never be regarded as an act acceptable to the Deity. No act of worship, unless dictated by heartfelt love, can be pleasing to the Almighty. God listens alone to the voice of the heart.

A claim that Sunday laws do not compel religious worship.

A true statement.

[1] Nor is it necessary to *compel an act of religious worship* in order to destroy religious liberty. The most veritable despotism can exist, and yet not compel acts of religious worship. To compel a man to *refrain from doing* that which he considers it his duty to do, infringes his rights just as truly as *to compel him to do* that which he considers it his duty to refrain from doing. *In both cases it is compelling him to violate his convictions.* Judge Cooley, on this point, says: "But the Jew [and it is equally true of all Sabbatarians] who is forced to respect the first day of the week, when his conscience requires of him the observance of the seventh also, may plausibly urge that *the law discriminates against his religion*, and by forcing him to keep a second Sabbath in each week, *unjustly*, though by indirection, *punishes him for his belief.*" "Constitutional Limitations," page *476. And Mr. Justice Burnett, in *Ex parte* Newman (9 California, pages 514, 515), declared: "When, therefore, the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything, because it violates simply a religious principle or observance, the act is unconstitutional."

Any compulsion in religion violates rights.

Judge Cooley's statement.

Discrimination a violation of rights.

Compulsory religious acts unconstitutional.

Bearing in mind that our Constitution was framed for a peo-*ple whose religion was Christianity, who had long lived under, and experienced the necessity of, laws to secure the observance of Sunday as a day of rest, how remarkable would it have been, that they should have agreed to make common, by their fundamental law, a day consecrated from the very birth of their religion, and hallowed by associations dear to every Christian. Convert Sunday into a worldly day by law, and what becomes of Christianity? How can we reconcile the idea to our understanding, that a people professing Christianity would make a fundamental law by which they would convert Sunday into a wordly day? It would have been an act of deadly hostility to the religion they professed, exposing it to the danger of being reduced to the condition in which it was before the Roman world was governed by Christian princes. Though it might not be persecuted by the arm of the civil power, it would be driven by the annoyances and interruptions of the world to corners and by-places, in which to find a retreat for its undisturbed exercise. [*219]

It would be just where its Author designed it to be.

How startling would the announcement be to the people of Missouri that, by their organic law, they had abolished Sunday as a day of rest, and had put it out of the power of their legislators ever to restore it as such! With what sorrow would the toil-worn laborer receive the intelligence that there was no longer by law a day of rest from his labor![1] The poor

A peculiar argument.

[1] This is a characteristic appeal of Sunday-rest advocates. Sermons are preached and pages are written pleading for Sunday laws for the benefit of the poor laboring man. But yet one of the most prominent features of the prosecutions for Sunday work is that the laboring man is the victim of these "reform" agitators! A seventh-day Christian in Arkansas, a Mr. Swearingen, with his son, a lad seventeen years of age, was indicted and fined. Not having the money to pay the fine and costs, they were sent to jail. A horse of his was then sold, and afterwards the sheriff levied on his mare, harness, wagon, and a cow and calf to pay the

A characteristic appeal.

Prosecution of laboring men.

A peculiar argument.

beasts of burden would soon find by experience that our laws were no longer tempered by the softening influences of Christianity, and all the social advantages, which great and good men have attributed to the observance of Sunday as a day of rest, would be taken away.[1]

Assistance furnished.

balance of the fine and costs, and their board while in jail. The bill was paid, however, by his brethren, and the release of his property secured. Another victim in Tennessee was helped to the extent of over four hundred dollars by the National Religious Liberty Association. He was confined in a loathsome prison for a considerable period, and died not long after his release. Hundreds of dollars have been furnished by this Association and the seventh-day observers to help the poor who have been arrested and fined or imprisoned in various States for conscientiously disregarding these religious laws.

Who it is demanding Sunday laws.

It is not the poor laboring men who are demanding these Sunday laws. It is the churches; and it has been only by the most earnest and untiring efforts on their part that the laboring classes have been prevailed upon to indorse the Sunday bills. Even then failure has sometimes resulted, as is evident from the speech of Master Workman Millard F. Hobbs of the District of Columbia, *ante* pages 369, 370. Although claiming that the laboring people are so anxious for these laws, still the contrary state of affairs has been a matter of complaint on the part of the leaders in the movement. Rev. Wilbur F. Crafts, who for many years has been a leading worker for Sunday legislation, after setting forth in his "Sabbath for Man" what he deems conclusive evidence of the benefit of compulsory Sabbath observance, says:

Admission of Mr. Crafts.

Position of laboring class.

"Blind to these great facts, a Shoe Lasters' Union in Brooklyn at the publication of the new Penal Code of New York in 1882, adopted a paper which thus describes the Sabbath laws: 'We learn with regret that the churches are joining hands with tyranny and capital for the purpose of suppressing liberty and oppressing the laborer'—sentiments representative of many labor organizations, which show that holiday Sundays prevent those who follow them from learning the a-b-c of political science, and keep them in such ignorance of the true meaning of liberty that they mistake its champions for oppressors.

Sunday laws oppress the laborer.

Position of educated men.

Sunday laws interfere with liberty.

Basis of Sunday laws.

"Even educated men sometimes make the same blunder from infidel prejudices. John Stuart Mill characterizes 'Sabbatarian legislation as an illegitimate interference with the rightful liberty of the individual,' and with strange intellectual perversity affirms that 'the only ground on which restrictions on Sunday amusements can be defended must be that they are religiously wrong.'" "The Sabbath for Man," page 226.

[1] This argument, although on a par with arguments generally for religious legislation, cannot fail to provoke a smile; — as though people

Sunday laws decided to be constitutional.

In conclusion, we are of the opinion that there is nothing inconsistent with the Constitution, as it was understood at the time of its adoption, with a law compelling the observance of Sunday as a day of rest. The Constitution itself recognizes that day as a day of rest, and from the circumstances under which it was done, we are warranted in the opinion that a power to *compel a cessation from labor on that day was not designed to be withheld from the General Assembly. [*220]

Peculiar ideas.

would not rest unless compelled to do so by law! as though the working proclivities of people were so abnormally developed that the only means on earth of inducing the exhausted individual to stop working was to do so by shutting him up in the dark cell of some jail! If an intelligent and free people do not have common sense enough to rest when they need it, how can they be trusted to eat the proper food, wear the proper clothes, take the proper amount of sleep, etc.? Why not re-enact at once all the former sumptuary laws of England? If the government has a right to take away the individual's freedom in the matter of rest, so also it has the right to take away his freedom in the matter of eating and sleeping. Mr. Justice Burnett, in *Ex parte* Newman, 9 California, 518, declares:

A pertinent question.

Opinion of Mr. Justice Burnett.

"The question arising under this act is quite distinguishable from a case where the Legislature of a State in which slavery is tolerated, passes an act for the protection of the slave against the inhumanity of the master in not allowing sufficient rest. In this State every man is a free agent, competent and able to protect himself, and no one is bound by law to labor for any particular person. Free agents must be left free, as to themselves. Had the act under consideration been confined to infants or persons bound by law to obey others, then the question presented would have been different. But if we cannot trust free agents to regulate their own labor, its times and quantity, it is difficult to trust them to make their own contracts. If the Legislature could prescribe the *days* of rest for them, then it would seem that the same power could prescribe the *hours* to work, rest, and eat."

Free agents should be left free.

Logical conclusion.

Mr. Chief Justice Ruffin of the Supreme Court of North Carolina, admits that it is religious, and not scientific, ground upon which Sunday legislation rests. In the case of the State *v.* Williams, 4 Iredell, 403, he said:

Basis of Sunday laws.

"The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty."

April Term, 1858.

SUPREME COURT OF CALIFORNIA.

APRIL TERM, 1858.

EX PARTE NEWMAN.[1]

. . . . . .

Sunday law unconstitutional.

SUNDAY LAW UNCONSTITUTIONAL.— Per TERRY, Chief Justice.— The act of April, 1858, "for the better observance of the Sabbath," is in conflict with the first and fourth sections of article first of the Constitution of the State, and is therefore void.

Religious liberty, not religious toleration, intended by Constitution.

CONSTITUTIONAL LAW.— RELIGIOUS TOLERATION.— The Constitution, when it forbids discrimination or preference in religion, does not mean merely to guarantee toleration, but religious liberty in its largest sense, and a perfect equality without distinction between religious sects. The enforced observance of a day held sacred by one of these sects, is a discrimination in favor of that sect, and a violation of the religious freedom of the others.

Power of Legislature.

IDEM.— POWER OF THE LEGISLATURE.— Considered as a municipal regulation, the Legislature has no right to forbid or enjoin the lawful pursuit of a lawful occupation on one day of the week, any more than it can forbid it altogether.

Power of government.

IDEM.— EXTENT OF POWER OF GOVERNMENT.— The governmental power only extends to restraining each one in the freedom of his conduct so as to secure perfect protection to all others from every species of danger to person, health, and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these seem to be all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation.

IDEM.— ACT UNCONSTITUTIONAL.— The act in question is in intention and effect a discrimination in favor of one religious profession over all others, and as such is in violation of the Constitution.

Religious equality entitled to protection.

IDEM.— RELIGIOUS EQUALITY ENTITLED TO PROTECTION.— Per BURNETT, Justice.— Our Constitutional theory regards all religions, *as such*, as equally entitled to protection, and equally unentitled to preference. When there is no ground or necessity upon which a principle can rest but a religious one, then the Constitution steps in and says that it shall not be enforced by authority of law.

[1] 9 California, 502. Field, Justice, dissented from the decision of the court, and, subsequently, when he became Chief Justice, in *Ex parte* Andrews, 18 California, 685, this decision was disapproved, and the dissenting opinion of Field, Justice, approved.

SUNDAY LAW UNCONSTITUTIONAL.— The Sunday law violates this provision of the Constitution, because it establishes a compulsory religious observance. It violates as much the religious freedom of the Christian as of the Jew. The principle is the same, whether the act compels us to do what we wish to do or what we wish not to do. Principle underlying Sunday laws.

IDEM.— POWER OF LEGISLATURE.— If the Legislature has the power to establish a day of compulsory rest, it has the right to select the particular day. Power of Legislature.

IDEM.— PROTECTION OF CONSTITUTION.— The protection of the Constitution extends to every individual or to none. It is the individual that is intended to be protected. Every citizen has the right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State. When the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from doing anything because it violates simply a religious principle or observance, the act is unconstitutional. Extent of protection of Constitution.

IDEM.— A QUESTION OF LEGISLATIVE POWER.— The constitutional question is a naked question of legislative power, and the inquiry as to the reasons which operated on the minds of members in voting for the measure, is wholly immaterial.

CONSTITUTION CONSTRUED.— If section first of article first of the Constitution asserts a principle not susceptible of practical application, then it may admit of a question whether any principle asserted in the declaration of rights can be the subject of judicial enforcement. And if such a position be true, that the rights of property cannot be enforced by the courts against an act of the Legislature, a power is then conceded which renders the provisions of the other sections wholly inoperative. Constitution construed.

IDEM.— RIGHT TO POSSESS PROPERTY.— The right to possess and protect property is not more clearly protected by the Constitution, than the right to acquire it. The right to acquire is the right to use the proper means to attain the end; and the use of such means cannot be prohibited by the Legislature, except the peace and safety of the State require it. Rights of property.

IDEM.— Free agents must be left free, as to themselves. If they cannot be trusted to regulate their own labor, its times, and quantity, it is difficult to trust them to make their own contracts. If the Legislature can prescribe the *days* of rest for them, it would seem that the same power can prescribe the *hours* to work, rest, and eat. Freedom of the individual.

. . . . . .

HABEAS CORPUS.

Newman, the petitioner, was tried, and convicted before a justice of the peace of the city of Sacramento, for a violation of the act of April tenth, 1858, entitled, "An act to provide for the better observance Statement of case.

Statement of case.

of the Sabbath," and was sentenced to pay a fine of fifty dollars, and the costs of the prosecution — [*504] twenty *dollars — or, in the default of the payment of such fine and costs, to be imprisoned thirty-five days. Failing to pay the fine and costs imposed, he was imprisoned. The petitioner is an Israelite, engaged in the business of selling clothing, at Sacramento. The offense of which he was convicted was the sale of goods on Sunday. Upon his imprisonment, he petitioned this court for a writ of *habeas corpus*, and prayed that he might be discharged from imprisonment, on the ground of the illegality of the same, by reason of the unconstitutionality of the act.

The writ was issued, and on the return thereof, the petitioner was discharged.

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Decision of Chief Justice.

TERRY, Chief Justice.—The petitioner was tried and convicted before a justice of the peace for a violation of the act of April, 1858, entitled, "An act for the better observance of the Sabbath," and upon his failure to pay the fine imposed, was imprisoned.

The counsel for petitioner moves his discharge, on the ground that the act under which these proceedings were had is in conflict with the first and fourth sections of the first article of the State Constitution, and therefore void.

All men equally free and independent.

The first section declares, "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness."

Equality of all religions.

The fourth section declares, "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

Questions arising.

The questions which arise in the consideration of the case, are:

1. Does the act of the Legislature make a discrimination or preference favorable to one religious profession, or is it a mere civil rule of conduct?

2. Has the Legislature the power to enact a municipal regulation which enforces upon the citizen a compulsory abstinence from his ordinary lawful and peaceable avocations for one day in the week?

The law intended to favor religion.

There is no expression in the act under consideration which can lead to the conclusion that it was intended as a civil rule, as contradistinguished from a law for the benefit of religion. It is entitled, "An act for the better observance of the Sabbath," and the prohibitions in the body of the act are confined to the "Christian Sabbath."

Decisions of other States.

It is, however, contended, on the authority of some of the decisions of other States, that, notwithstanding the pointed language *of the act, it may be [*505] construed into a civil rule of action, and that the result would be the same, even if the language were essentially different.

Interpretation of law.

The fault of this argument is that it is opposed to the universally admitted rule which requires a law to be construed according to the intention of the lawmaker, and this intention to be gathered from the language of the law, according to its plain and common acceptation.

Claims advanced.

It is contended that a civil rule requiring the devotion of one seventh of the time to repose, is an absolute necessity, and the want of it has been dilated upon as a great evil to society. But have the Legislatures so considered it? Such an assumption is not warranted by anything contained in the Sunday law.

Intention of Sunday law.

On the contrary, the intention which pervades the whole act is to enforce, as a religious institution, the observance of a day held sacred by the followers of

Intention of Sunday law.

one faith, and entirely disregarded by all other denominations within the State. The whole scope of the act is expressive of an intention on the part of the Legislature to require a periodical cessation from ordinary pursuits, not as a civil duty, necessary for the repression of any existing evil, but in furtherance of the interests, and in aid of the devotions, of those who profess the Christian religion.

Several authorities, affirming the validity of similar statutes, have been cited from the reports of other States. While we entertain a profound respect for the courts of our sister States, we do not feel called upon to yield our convictions of right to a blind adherence to precedent; especially when they are, in our opinion, opposed to principle, and the reasoning by which they are endeavored to be supported is by no means satisfactory or convincing. In Bryan *v.* Berry, 6 California, 398, in reference to the decisions of other States, we said: "Decided cases are, in some sense, evidence of what the law is. We say in some sense, because it is not so much the decision as the reasoning upon which the decision is based, which makes it authority, and requires it to be respected."

Principles ahead of precedents.

Sense in which precedents are authority.

It will be unnecessary to examine all the cases cited by the district attorney. The two leading cases in which the question is more elaborately discussed than in the others, are the cases of Sepect *v.* the Commmonwealth, 8 Barr, 313, and the City Council *v.* Benjamin, 2 Strobhart, 508, decided respectively by the Supreme Courts of Pennsylvania and South Carolina. These decisions are based upon the ground that the statutes requiring the observance of the Christian Sabbath, established merely a civil rule, and make no discrimination or preference in favor of any religion. By an examination of these cases, it will be seen that the position taken rests in mere assertion, and that not a single argument is adduced

Leading cases examined.

Lack of argument in cases cited.

to prove that a preference in favor of the Christian religion is not given by the law. In the case in 8 Barr, the court said: "It [the law] intermeddles not with the natural and indefeasible right of all men to worship Almighty God according to the dictates of their own consciences; it compels none to attend, erect, or support any place of worship, or to maintain any ministry against his consent; it pretends not to control or interfere with the rights of conscience, and it establishes no preference for any religious establishment or mode of worship." [*506]

Examination of argument.

This is the substance of the arguments to show that these laws establish no preference. The last clause in the extract asserts the proposition broadly; but it is surely no legitimate conclusion from what precedes it, and must be taken as the plainest example of *petitio principii*. That which precedes it establishes that the law does not destroy religious toleration, but that is all.

More than toleration intended.

Now, does our Constitution, when it forbids discrimination, or preference, in religion, mean merely to guarantee toleration? For that, in effect, is all which the cases cited seem to award, as the right of a citizen. In a community composed of persons of various religious denominations, having different days of worship, each considering his own as sacred from secular employment, all being equally considered and protected under the Constitution, a law is passed which in effect recognizes the sacred character of one of these days, by compelling all others to abstain from secular employment, which is precisely one of the modes in which its observance is manifested, and required by the creed of that sect to which it belongs as a Sabbath. Is not this a discrimination in favor of the one? Does it require more than an appeal to one's common sense to decide that this is a preference? And when the Jew or

Compulsory rest is compulsory Sabbath observance.

Not an answer.

seventh-day Christian complains of this, is it any answer to say, Your conscience is not constrained, you are not compelled to worship or to perform religious rites on that day, nor forbidden to keep holy the day which you esteem as a Sabbath? We think not, however high the authority which decides otherwise.

American institutions intend perfect equality in religion.

When our liberties were acquired, our republican form of government adopted, and our Constitution framed, we deemed that we had attained not only toleration, but religious liberty in its largest sense — a complete separation between church and state, and a perfect equality without distinction between all religious sects.[1] "Our government," says Mr. Johnson, in his celebrated Sunday mail report, "is a civil, and not a religious, institution: whatever may be the religious sentiments of citizens, and however variant, they are alike entitled to protection from the government, so long as they do not invade the rights of others." And again, dwelling upon the danger of applying the powers of government to the furtherance and support of sectarian objects, he remarks, in language which should not be forgotten, but which ought to be deeply impressed on the minds of all who

Our government civil, not religious.

[*507] *desire to maintain the supremacy of our republican system: "Extensive religious combinations to effect a political object are, in the opinion of the committee, always dangerous. The first effort of the kind calls for the establishment of a principle which would lay the foundation for dangerous innovation upon the spirit of the Constitution, and upon the religious

Religio-political combinations always dangerous.

[1] See Bloom *v.* Richards, *ante* page 422; Hale *v.* Everett, 53 New Hampshire, 1; also *ante* page 242, note 2. The principle of absolute religious equality is the foundation-stone of religious liberty in this country. As Madison says, "Whilst we assert for ourselves a freedom to embrace, to profess, and to observe, the religion which we believe to be of divine origin, we cannot deny an equal freedom to them whose minds have not yet yielded to the evidence which has convinced us."

Foundation-stone of religious liberty.

rights of the citizens. If admitted, it may be justly apprehended that the future measures of the government will be strongly marked, if not eventually controlled, by the same influence. All religious despotism commences by combination and influence, and when that influence begins to operate upon the political institution of a country, the civil power soon bends under it, and the catastrophe of other nations furnishes an awful warning of the consequences. . . What other nations call religious toleration, we call religious rights; they were not exercised in virtue of governmental indulgence, but as rights of which the government cannot deprive any portion of her citizens, however small. Despotic power may invade those rights, but justice still confirms them. Let the national legislature once perform an act which involves the decision of a religious controversy, and it will have passed its legitimate bounds. The precedent will then be established, and the foundation laid for that usurpation of the divine prerogative in this country, which has been the desolating scourge of the fairest portions of the Old World. Our Constitution recognizes no other power than that of persuasion for enforcing religious observances."

Pernicious influence.

Inception of all religious depotism.

Religious rights inalienable.

A single religious decision by government a usurpation.

Unconstitutionality of forced religious observance.

We next come to the question whether, considering the Sunday law as a civil regulation, it is in the power of the Legislature to enforce a compulsory abstinence from lawful and ordinary occupation for a given period of time, without some apparent civil necessity for such action; whether a pursuit, which is not only peaceable and lawful, but also praiseworthy and commendable, for six days in the week, can be arbitrarily converted into a penal offense or misdemeanor on the seventh. As a general rule, it will be admitted that men have a natural right to do anything which their inclinations may suggest, if it be not evil in itself, and in no way impairs the rights

Considered as a civil regulation.

Individual rights.

Formation of society.

of others.[1] When societies are formed, each individual surrenders certain rights,[2] and as an equivalent for that surrender, has secured to him the enjoyment of certain others appertaining to his person and property, without the protection of which society cannot exist. All legislation is a restraint on individuals, but it is a restraint which must be submitted to by all who would enjoy the benefits derived from the institutions of society.

A necessity for the preservation of free institutions.

It is necessary, for the preservation of free institutions, that there should be some general and easily recognized rule to determine the extent of governmental power, and establish a proper line of demarkation between such as are strictly legitimate and

[508] *such as are usurpations which invade the reserved rights of the citizen, and infringe upon his constitutional liberty. The true rule of distinction would seem to be that which allows the Legislature the

Sphere of government.

None should be allowed to encroach upon rights of others.

right so to restrain each one, in his freedom of conduct, as to secure perfect protection to all others from every species of danger to person, health, and property; that each individual shall be required so to use his own as not to inflict injury upon his neighbor; and these, we think, are all the immunities which can be justly claimed by one portion of society from another, under a government of constitutional limitation. For these reasons the law restrains the establishment of tanneries, slaughter-houses, gunpowder depots, the discharge of fire-arms, etc., in a city, the sale of drugs and poisons, and the practice of physic

Justifiable civil regulations.

Statement of a principle.

[1] As Mr. Herbert Spencer says: "Every man has the right to do whatsoever he wills, provided that in the doing thereof he infringes not the equal right of any other man."

Natural rights inalienable.

[2] For the views of Mr. Jefferson and others upon this question, see *ante* page 187 *et seq.* The *natural* rights of man are inalienable; for governments have no legitimate power to take away what they were instituted to protect. As declared by the United States Senate, "Despotic power may invade those rights, but justice still confirms them."

by incompetent persons, and makes a variety of other prohibitions, the reason and sense of which are obvious to the most common understanding.

Legitimate prohibitions.

Now, when we come to inquire what reason can be given for the claim of power to enact a Sunday law, we are told, looking at it in its purely civil aspect, that it is absolutely necessary for the benefit of *his* [the individual's] health and the restoration of *his* powers, and in aid of this great social necessity, the Legislature may, for the general convenience, set apart a particular day of rest, and require its observance by all.

Reasons given for enactment of Sunday laws.

This argument is founded on the assumption that men are in the habit of working too much, and thereby entailing evil upon society; and that, without compulsion, they will not seek the necessary repose which their exhausted natures demand. This is to us a new theory, and is contradicted by the history of the past and the observation of the present. We have heard, in all ages, of declamations and reproaches against the vice of indolence; but we have yet to learn that there has ever been any general complaint of an intemperate, vicious, unhealthy, or morbid industry. On the contrary, we know that mankind seek cessation from toil, from the natural influences of self-preservation, in the same manner and as certainly as they seek slumber, relief from pain, or food to appease their hunger.

Argument founded on an incorrect assumption.

Man will rest for self-preservation.

Again: it may be well considered that the amount of rest which would be required by one half of society may be widely disproportionate to that required by the other. It is a matter of which each individual must be permitted to judge for himself, according to his own instincts and necessities. As well might the Legislature fix the days and hours for work, and enforce their observance by an unbending rule which shall be visited alike upon the weak and strong.

Some require more rest than do others.

Hours of work, also, might as well be compulsory

Sumptuary laws a usurpation.

Whenever such attempts are made, the law-making power leaves its legitimate sphere, and makes an incursion into the realms of physiology, and its enactments, like the sumptuary laws of the ancients, which prescribe the mode and texture of people's clothing, [*509] or similar laws which *might prescribe and limit our food and drink, must be regarded as an invasion, without reason or necessity, of the natural rights of the citizen, which are guaranteed by the fundamental law.

An invasion of natural rights.

The truth.

The truth is, however much it may be disguised, that this one day of rest is a purely religious idea. Derived from the Sabbatical institutions of the ancient Hebrew, it has been adopted into all the creeds of succeeding religious sects, throughout the civilized world; and whether it be the Friday of the Mahometan, the Saturday of the Israelite, or the Sunday of the Christian, it is alike fixed in the affections of its followers, beyond the power of eradication; and in most of the States of our Confederacy, the aid of the law to enforce its observance has been given, under the pretense of a civil, municipal, or police regulation.

Variety of opinion.

A false pretense.

But it has been argued that this is a question exclusively for the Legislature; that the law-making power alone has the right to judge of the necessity and character of all police rules, and that there is no power in the judiciary to interfere with the exercise of this right.

Judiciary is to protect constitutional rights.

One of the objects for which the judicial department is established, is the protection of the constitutional rights of the citizen. The question presented in this case is not merely one of expediency or abuse of power; it is a question of usurpation of power. If the Legislature have the authority to appoint a time of compulsory rest, we would have no right to interfere with it, even if they required a cessation from

toil for six days in the week, instead of one. If they possess this power, it is without limit, and may extend to the prohibition of all occupations at all times.

Logical deductions from Sunday legislation.

While we concede to the Legislature all the supremacy to which it is entitled, we cannot yield to it the omnipotence which has been ascribed to the British Parliament, so long as we have a Constitution which limits its powers, and places certain innate rights of the citizen beyond its control.

Legislature not omnipotent.

It is said that the first section of article first of the Constitution is a common-place assertion of a general principle, and was not intended as a restriction upon the power of the Legislature. This court has not so considered it.

A characteristic claim.

In Billings *v.* Hall, 7 California, 1, Chief Justice Murray says, in reference to this section of the Constitution: "This principle is as old as the Magna Charta. It lies at the foundation of every constitutional government, and is necessary to the existence of civil liberty and free institutions. It was not lightly incorporated into the Constitution of this State, as one of those political dogmas designed to tickle the popular ear, and conveying no substantial meaning or idea, but as one of those fundamental principles of enlightened government, without a rigorous observance of which there could be neither liberty nor safety to the citizen."

A fundamental principle.

It must be rigorously observed to insure liberty.

In the same case, Mr. Justice Burnett asserted the following *principles, which bear directly upon the question: "That among the inalienable rights declared by our Constitution as belonging to each citizen, is a right of acquiring, possessing, and protecting property. . . . That for the Constitution to declare a right inalienable, and at the same time leave the Legislature unlimited power over it, would be a contradiction in terms, an idle provision, proving that a Constitution was a mere parchment barrier,

[*510]

An inalienable right.

Ruinous consequences of a non-enforcement of bill of rights.

insufficient to protect the citizen, delusive, and visionary, and the practical result of which would be to destroy, not conserve, the rights it vainly assumed to protect."[1]

Upon this point, I dissent from the opinion of the court in Billings *v.* Hall, and if I considered the question an open one, I might yet doubt its correctness; but the doctrine announced in that opinion having received the sanction of the majority of the court, has become the rule of decision, and it is the duty of the court to see it is uniformly enforced, and that its application is not confined to a particular class of cases.

California Supreme Court enforces constitutional rights.

It is the settled doctrine of this court to enforce every provision of the Constitution in favor of the rights reserved to the citizen against a usurpation of power in any question whatsoever; and although in a doubtful case we would yield to the authority of the Legislature, yet upon the question before us, we are constrained to declare that, in our opinion, the act in question is in conflict with the first section of article first of the Constitution, because, without necessity, it infringes upon the liberty of the citizen, by restraining his right to acquire property.

Sunday law unconstitutional.

And that it is in conflict with the fourth section of the same article, because it was intended as, and is in effect, a discrimination in favor of one religious profession, and gives it a preference over all others.

Discriminates in favor of Christianity.

It follows that the prisoner was improperly convicted, and it is ordered that he be discharged from custody.

Madison's assertion.

[1] Mr. Madison, in remonstrating against any infringement by the Legislature of Virginia upon the religious liberty of the individual, had occasion to assert the same principle: "Either, then, we must say that the will of the Legislature is the only measure of their authority, and that in the plentitude of that authority they may sweep away all our fundamental rights, or that they are bound to leave this particular right untouched and sacred." *Ante* page 129.

BURNETT, Justice.—The great importance of the constitutional principle involved, and the different view I take of some points, make it proper for me to submit a separate opinion. The question is one of no ordinary magnitude, and of great intrinsic difficulty. The embarrassment we might otherwise experience in deciding a question of such interest to the community, and in reference to which there exists so great a difference of opinion, is increased by the consideration that the weight of the adjudged cases is against the conclusion at which we have been compelled to arrive.

Importance of question.

Great difference of opinion.

In considering this constitutional question, it must be conceded that there are some great leading principles of justice, eternal and unchangeable, that are applicable at all times and under all circumstances. It is upon this basis that all Constitutions of *free [*511] government must rest. A Constitution that admits that there are many inalienable rights of human nature reserved to the individual, and not ceded to society, must, of logical necessity, concede the truth of this position. But it is equally true that there are other principles, the application of which may be justly modified by circumstances.

Eternal and unchangeable principles.

It would seem to be true that exact justice is only an exact conformity to some law. Without law there could be neither merit nor demerit, justice nor injustice; and, when we come to decide the question whether a given act be just or unjust, we must keep in our view that system of law by which we judge it. As judged by one code of law, the act may be innocent; while, as judged by another, it may be criminal. As judged by the system of abstract justice (which is only that code of law which springs from the natural relation and fitness of things), there must be certain inherent and inalienable rights of human nature that no government can rightfully take away.

Justice a conformity to some law.

Abstract justice.

Retention of individual rights.

These rights are retained by the individual because their surrender is not required by the good of the whole. The just and legitimate ends of civil government can be practically and efficiently accomplished whilst these rights are retained by the individual. Every person, upon entering into a state of society, only surrenders so much of his individual rights as may be necessary to secure the substantial happiness of the community.[1] Whatever is not necessary to attain this end, is reserved to himself.

But, conceding the entire correctness of these views, it must be equally clear that the original and primary jurisdiction to determine the question what are these inalienable rights, must exist somewhere; and wherever placed, its exercise must be conclusive, in the contemplation of the theory upon all.

Sovereignty of the people.

The power to decide what individual right must be conceded to society, originally existed in the sovereign people who made the Constitution. As they possessed this primary and original jurisdiction, their action must be final. If they exercised this power, in whole or in part, in the formation of the Constitution, their action, so far, is conclusive.

It must also be conceded that this power, from its very nature, must be legislative, and not judicial. The question is simply one of necessity — of abstract justice. It is a question that naturally enters into the mind of the law-maker, not into that of the law-expounder. The judicial power, from the nature of its functions, cannot determine such a question. Judicial justice is but conformity to the law as already made.

Judiciary must abide by Constitution.

If these views be correct, the judicial department cannot, in any case, go behind the Constitution, and by any original standard judge the justice or legality

[1] For a discussion of this question, see *ante* page 187 *et seq.*

of any single one or more of its provisions. The judiciary is but the creature of the Constitution, and cannot judge its creator. It cannot rise above the *source of its own existence. If it could do this, it could annul the Constitution, instead of simply declaring what it means. And the same may be said of any act of the Legislature, if within the limits of its discretion, as defined by the Constitution. Such an act of the Legislature is as much beyond the reach of the judiciary as is the Constitution itself. 1 Baldwin, 74; 1 Brockenborough, 203; 10 Peters, 478; 5 Georgia, 194.

Judiciary a creature of Constitution.

[*512]

But it is the right and the imperative duty of this court to construe the Constitution and statutes in the last resort; and, from that construction, to ascertain the will of the law-maker. And the only legitimate purpose for which a court can resort to the principles of abstract justice, is to ascertain the proper construction of the law in cases of doubt. When, in the opinion of the court, a given construction is clearly contrary to the manifest principles of justice, then it will be presumed, as a case not free from doubt, that the Legislature never intended such a consequence. Varick *v.* Briggs, 6 Paige, 330; Flint River Steamboat Company *v.* Foster, 5 Georgia, 194. But when the intention is clear, however unjust and absurd the consequences may be, it must prevail, unless it contravenes a constitutional provision.

Duty of judiciary to construe Constitution.

If these views be correct, it follows that there can be for this court no higher law than the Constitution; and in determining this question of constitutional construction, we must forget, as far as in us lies, that we are religious or irreligious men. It is solely a matter of construction, with which our individual feelings, prejudices, or opinions upon abstract questions of justice, can have nothing to do. The Constitution may have been unwisely framed. It may

Constitution the supreme law.

Limitations of power.

have given too much or too little power to the Legislature. But these are questions for the statesmen, not the jurist. Courts are bound by the law as it is.

British *v.* American principles.

The British Constitution differs from our American Constitutions in one great leading feature. It only classifies and distributes, but does not limit the powers of government; while our Constitutions do both. It is believed that this difference has been sometimes overlooked by our courts in considering constitutional questions; and English authorities followed in cases to which they could be properly applied. We often meet with the expression that Christianity is a part of the common law. Conceding that this is true, it is not perceived how it can influence the decision of a constitutional question. The Constitution of this State will not tolerate any discrimination or preference in favor of any religion; and, so far as the common law conflicts with this provision, it must yield to the Constitution. Our constitutional theory regards all religions, as such, equally entitled to protection, and all equally unentitled to any preference. Before the Constitution they are all equal. In so far as the principles found in all, or in any one or more of the different *religious systems, are considered applicable to the ends legitimately contemplated by civil constitutional government, they can be embodied in our laws and enforced. But when there is no ground or necessity upon which a principle can rest, but a religious one, then the Constitution steps in, and says that you shall not enforce it by authority of law.

Difference overlooked.

All preference in religion unconstitutional.

Equality of all religions.

[*513]

Provision of Constitution.

The Constitution says that "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State."

If we give this language a mere literal construction, we must conclude that the protection given is only

Constitution construed.

intended for the professor, and not for him who does not worship. "The free exercise and enjoyment of religious profession and worship," is the thing expressly protected by the Constitution. But, taking the whole section together, it is clear that the scope and purpose of the Constitution was to assert the great, broad principle of religious freedom for all — for the believer and the unbeliever. The government has no more power to punish a citizen when he professes no religion, than it has when he professes any particular religion.

Constitution intended religious freedom for all.

Sunday laws compel religious observance.

The act of the Legislature under consideration violates this section of the Constitution, because it establishes a compulsory religious observance; and not, as I conceive, because it makes a discrimination between different systems of religion. If it be true that the Constitution intended to secure entire religious freedom to all, without regard to the fact whether they were believers or unbelievers, then it follows that the Legislature could not create and enforce any merely religious observance whatever. It was the purpose of the Constitution to establish a *permanent* principle, applicable at all times, under all circumstances, and to all persons. If all the people of the State had been unbelievers, the act would have been subject to the same objection. So, if they had all been Christians, the power of the Legislature to pass the act would equally have been wanting. The will of the whole people has been expressed through the Constitution, and until this expression of their will has been changed in some authoritative form, it must prevail with all the departments of the State government. The Constitution, from its very nature as a permanent organic act, could not shape its provisions so as to meet the changing views of individuals. Had the act made Monday, instead of Sunday, a day of compulsory rest, the constitutional question would

A permanent principle established.

An important observation.

The principle involved.

Religious compulsion wrong in itself.

have been the same. The fact that the Christian *voluntarily* keeps holy the first day of the week, does not authorize the Legislature to make that observance *compulsory*. The Legislature cannot compel the citizen to do that which the Constitution leaves him free to do or omit, at his election. The act violates as much the religious freedom of the Christian as of the Jew. Because the conscientious views of
[*514] *the Christian compel him to keep Sunday as a Sabbath, he has the right to object, when the Legislature invades his freedom of religious worship, and assumes the power to compel him to do that which he has the right to omit if he pleases. The principle is the same, whether the act of the Legislature *compels* us to do that which we wish to do or not to do.

An important observation.

Sphere of legislation.

The *compulsory* power does not exist in either case. If the Legislature has power over the subject, this power exists without regard to the particular views of individuals. The sole inquiry with us is, whether the Legislature can create a day of compulsory rest. If the Legislature has the power, then it has the right to select the particular day. It could not well do otherwise.

Constitutional principles.

Number to be protected immaterial.

The protection of the Constitution extends to *every* individual or to none. It is the individual that is intended to be protected. The principle is the same whether the many or the few are concerned. The Constitution did not mean to inquire how many or how few would profess or not profess this or that particular religion. If there be but a single individual in the State who professes a particular faith, he is as much within the sacred protection of the Constitution as if he agreed with the great majority of his fellow-citizens. We cannot, therefore, inquire into the particular views of the petitioner, or of any other individual. We are not bound to take judicial notice of such matters, and they are not matters of proof.

A single individual as much entitled to protection as majority.

There may be individuals in the State who hold Monday as a Sabbath. If there be none such now, there may be in the future. And if the unconstitutionality of an act of this character depended, in any manner, upon the fact that a particular day of the week was selected, then it follows that any individual could defeat the act by professing to hold the day specified as his Sabbath. The Constitution protects the freedom of religious *profession* and *worship*, without regard to the sincerity or insincerity of the worshiper. We could not inquire into the fact whether the individual professing to hold a particular day as his Sabbath was sincere or otherwise. He has the right to profess and worship as he pleases, without having his motives inquired into. His motives in exercising a constitutional privilege are matters too sacred to be submitted to judicial scrutiny. Every citizen has the undoubted right to vote and worship as he pleases, without having his motives impeached in any tribunal of the State.

Questions involved.

Religious profession must be protected regardless of sincerity.

Motives not a matter of judicial investigation.

Under the Constitution of this State, the Legislature cannot pass any act, the legitimate effect of which is *forcibly* to establish any merely religious truth, or enforce any merely religious observances. The Legislature has no power over such a subject. When, therefore, the citizen is sought to be compelled by the Legislature to do any affirmative religious act, or to refrain from *doing anything, because it violates simply a religious principle or observance, the act is unconstitutional.

Unconstitutionality of forced religious observances.

[*515]

In considering the question whether the act can be sustained upon the ground that it is a mere municipal regulation, the inquiry as to the reasons which operated upon the minds of members, in voting for the measure, is, as I conceive, wholly immaterial. The constitutional question is a naked question of legislative power. Had the Legislature the power to

Considered as a civil regulation.

A question of legislative power.

do the particular thing done? What was that particular thing? It was the prohibition of labor on Sunday. Had the act been so framed as to show that it was intended by those who voted for it as simply a municipal regulation, yet if in fact it contravened the provision of the Constitution securing religious freedom to all, we should have been compelled to declare it unconstitutional for *that* reason. So, the fact that the act is so framed as to show that a different reason operated upon the minds of those who voted for it, will not prevent us from sustaining the act, if any portion of the Constitution conferred the power to pass it upon the Legislature.

Motives of the legislator effect not the unconstitutionality of Sunday laws.

Where the power exists to do a particular thing, and the thing is done, the reason which induced the act is not to be inquired into by the courts. The power may be abused, but the abuse of the power cannot be avoided by the judiciary. A court may give a wrong reason for a proper judgment; still, the judgment must stand. The members of the Legislature may vote for a particular measure from erroneous or improper motives. The only question with the courts is, whether that body had the power to command the particular act to be done or omitted. The view here advanced is sustained substantially by the decision in the case of Fletcher *v.* Peck, 6 Cranch, 131. It was urged, in argument, that the provision of the first section of the first article of the Constitution, asserting the "inalienable right of acquiring, possessing, and protecting property," was only the statement in general terms, on a general principle, not capable in its nature of being judicially enforced.

Motives of the legislator not a subject of judicial inquiry.

It will be observed that the first article contains a declaration of rights, and if the first section of that article asserts a principle not susceptible of practical application, then it may admit of a question whether

Construction of Constitution.

any principle asserted in this declaration of rights can be the subject of judicial enforcement. But that at least a portion of the general principle asserted in that article can be enforced by judicial determination, must be conceded. This has been held at all times, by all the courts, so far as I am informed.

Principles susceptible of enforcement.

The provisions of the sixteenth section of the first article, which prohibits the Legislature from passing any law impairing the obligation of contracts, is based upon essentially the same ground as the first section, which asserts the right to acquire, *possess, and defend property. The right substantially secured by both sections is the right of property. This right of property is the substantial basis upon which the provisions of both sections must rest. The reason of, and the end to be accomplished by, each section, are the same. The debtor has received property or other valuable consideration, for the sum he owes the creditor, and the sum, when collected by the creditor, becomes his property. The right of the creditor to collect from the debtor that which is due, is essentially a right of property. It is the right to obtain from the debtor property which is unjustly detained from the creditor.

Property rights.

[*516]

If we take the position to be true, for the sake of the argument, that the right of property cannot be enforced by the courts against an act of the Legislature, we then concede a power that renders the restrictions of other sections inoperative. For example, if the Legislature has the power to take the property of one citizen, and give it to another without compensation, the prohibition to pass any law impairing the obligation of contracts, could readily be avoided. All the Legislature would have to do to accomplish this purpose, would be to allow the creditor first to collect his debt, and afterwards take the property of the creditor, and give it to the debtor. For if we once

Property rights enforceable by the judiciary.

Property rights.

concede the power of the Legislature to take the property of A and give it to B, without compensation, we must concede to that body the exclusive right to judge when, and in what instance, this conceded right should be exercised.

Construction of first section.

It was also insisted, in argument, that the judicial enforcement of the right of property, as asserted in the first section, is inconsistent with the power of compulsory process, to enforce the collection of debts by the seizure and sale of the property of the debtor. But is this true? On the contrary, is not the power to seize and sell the property of the debtor expressly given by the Constitution for the very purpose of protecting and enforcing this right of property? When the Constitution says that you shall not impair the obligation of the contract, it says in direct effect that you shall enforce it; and the only means to do this efficiently is by a seizure and sale. The seizure and sale of the property of the debtor was contemplated by the Constitution, as being a part of the contract itself. The debtor stipulates in the contract, that, in case he fails to pay, the creditor may seize and sell his property by legal process. Such is the legal effect of the contract, because the existing law enters into and forms a part of it.

Provisions of Constitution harmonious.

The different provisions of the Constitution will be found when fairly and justly considered, to be harmonious and mutually dependent one upon the other. A general principle may be asserted in one section without any specification of the exceptions in that place. But it must be evident that practical

[*517] *convenience and logical arrangement will not always permit the exceptions to be stated in the same section. It is matter of no importance in what part of the Constitution the exception may be found. Wherever found, it must be taken from the general rule, leaving the remainder of the rule to stand. The

general right of enjoying and defending life and liberty is asserted in the first section of the first article; while the exceptions are stated in the eighth, ninth, fifteenth, and eighteenth sections of the same article. A party may, by express provisions of the Constitution, forfeit his liberty. The same remark, in reference to exceptions to general principles, will apply to other provisions.

Assertion of rights.

The right to protect and possess property is not more clearly protected by the Constitution than the right to acquire. The right to acquire must include the right to use the proper means to attain the end. The right itself would be impotent without the power to use its necessary incidents.[1] The Legislature, therefore, cannot prohibit the proper use of the means of acquiring property, except the peace and safety of the State require it. And in reference to this point, I adopt the reasons given by the Chief Justice, and concur in the views expressed by him.

Right to acquire, as sacred as right to protect, property.

Legislature cannot abridge this right.

[1] This important principle is not infrequently overlooked when the question of the constitutionality of Sunday laws is under consideration, "All men are created equal." All men have a right to use their time to acquire property. The legislature can no more deprive a person of the free use of a part of his time, than it can deprive him of the use of his time altogether. And because the Sabbatarian has enough independence of thought and enough strength of character to differ from the majority in Sabbath observance, it is manifestly unjust to deprive him for that reason of one seventh of his time, to which he has an inalienable right. The innate sense of every man asserts that he has the same right to his opinion that others have to their opinion; that he has the same right to work on such days as he wills, that others have to work on such days as they will. The question is one of individual rights, not a question of whether you do or whether you do not agree with the dominant religious party. Any laws interfering with the right to acquire property, like laws interfering with the rights to life and personal liberty, are a flagrant violation of the individual's natural rights.

An important principle.

Injustice to Sabbatarians.

The principle is as follows: An individual's rights cannot be infringed because he belongs to the minority. If I have a right to work six days, and then rest one, all others have the same right; and if I choose the first day on which to rest, no one has a right to molest me; and if my friend chooses the seventh day on which to rest, no one has a right to

Principle stated.

Limitations on Legislature.

There are certain classes of subjects over which the Legislature possesses a wide discretion; but still its discretion is confined within certain limits; and although, from the complex nature of the subject, these limits cannot always be definitely settled in advance, they do and must exist. It was long held, in general terms, that the Legislature had the power to regulate the remedy; but cases soon arose where the courts were compelled to interpose. In the case of Bronson *v.* Kenzie, 1 Howard, 311, Chief Justice Taney uses this clear language:

Chief Justice Taney's decision.

"It is difficult, perhaps, to draw a line that would be applicable in all cases, between legitimate alterations of the remedy and provisions which in the form of remedy impair the right; but it is manifest that the obligation of the contract may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by hampering the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing."

So, the power of the Legislature to pass recording acts and statutes of limitations is conceded, in general terms, and a wide discretion given. Yet, in

Equality of rights.

molest him. If I work on the day on which he rests without molesting him, no one has a right to stop or hinder me in my work; and, likewise, no one has a right to stop or hinder him if he works on the day on which I rest. This is justice and equality. But it is neither justice nor equality to deprive my friend of one day (Sunday) for work in every week because he chooses the seventh day on which to rest — thus giving him only five days in which to work for a livelihood.

Objection advanced.

"But," argues the advocate of Sunday laws, "the minority are not compelled to work on their Sabbath, but simply to refrain from working on our Sabbath." But if the legislature may compel the minority to "refrain from working" one day in the week, why not two? and if two, why not three? and if three, why not six? Thus there is no time to which the minority has a right; and the legislature (the servant of the people) is empowered to entirely deprive the people of the use of their time, and thus of the very means of sustaining life itself. To this absurd conclusion do the positions of Sunday-law advocates lead us.

Absurdity involved.

reference to these powers, Mr. Justice Baldwin, in delivering the opinion of the Supreme Court of the United States, in the case of Jackson *v.* Lamphine, 3 Peters, 289, uses this language: Power of Legislature.

"Cases may occur where the provisions of a law on these subjects may be so unreasonable as to amount to a denial of the right, and call for the interposition of the court." Justice Baldwin's decision.

The Legislature is vested by the Constitution with a wide dis-*cretion in determining what is necessary to the peace and safety of the State; yet this discretion has some limits. It may be difficult, in many cases, to define these limits with exact precision; but this difficulty cannot show that there are no limits. Such difficulties must arise under every system of limited government. [*518]

The question arising under this act is quite distinguishable from a case where the Legislature of a State in which slavery is tolerated, passes an act for the protection of the slave against the inhumanity of the master in not allowing sufficient rest. In this State every man is a free agent, competent and able to protect himself, and no one is bound by law to labor for any particular person. Free agents must be left free, as to themselves. Had the act under consideration been confined to infants or persons bound by law to obey others, then the question presented would have been different. But if we cannot trust free agents to regulate their own labor, its times and quantity, it is difficult to trust them to make their own contracts. If the Legislature could prescribe the *days* of rest for them, then it would seem that the same power could prescribe the *hours* to work, rest, and eat. Question of rest considered. Free agents should be left free. Logical conclusion.

For these reasons I concur with the Chief Justice in discharging the prisoner.

. . . . . .

December Term, 1872.

SUPREME COURT OF OHIO.

DECEMBER TERM, 1872.

THE BOARD OF EDUCATION OF THE CITY OF CINCINNATI v. JOHN D. MINOR ET AL.[1]

. . . . . .

Claims made.

We are told that this word "religion" must mean "Christian religion," because "Christianity is a part of the *common law of this country," lying behind and above its Constitutions. Those who make this assertion can hardly be serious, and intend the real import of their language. If Christianity is a *law* of the State, like every other law, it must have a *sanction*. Ade-

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Eminent counsel secured.

[1] The opinion in this case was rendered by Mr. Justice Welch. Stanley Matthews, since a Justice of the Supreme Court of the United States, and George Hoadley, subsequently Governor of Ohio, were of the counsel for the Board of Education, and delivered clear and effective speeches at the trial of the case before the Superior Court. The defendants had brought their action to the Superior Court of Cincinnati to enjoin the Board of Education from carrying into effect two resolutions adopted by the board, November 1, 1869, which read as follows:

Resolutions adopted by board.

"*Resolved*, That religious instruction, and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common school fund.

"*Resolved*, That so much of the regulations on the course of study and text-books in the intermediate and district schools (page 213, annual report) as reads as follows: 'The opening exercises in every department shall commence by reading a portion of the Bible, by or under the direction of the teacher, and appropriate singing by the pupils,' be repealed."

Decision of Superior Court.

Two of the judges of the Superior Court, Hagans and Storer, decided in favor of religion in the public schools, and enjoined the board from carrying the foregoing resolutions into effect. The other member of the court, Judge Taft, dissented. The case was then carried to the State Supreme Court, which reversed the decision of the lower court, and wrote a decision which proved of national interest, and justifies its republication. For decision entire, see 23 Ohio State, 211 *et seq.*

quate penalties must be provided to enforce obedience to all its requirements and precepts. No one seriously contends for any such doctrine in this country, or, I might almost say, in this age of the world. The only foundation — rather, the only excuse — for the proposition that Christianity is part of the law of this country, is the fact that it is a Christian country, and that its Constitutions and laws are made by a Christian people. And is not the very fact that those laws do *not* attempt to *enforce* Christianity, or to place it upon exceptional or vantage ground, itself a strong evidence that they *are* the laws of a Christian people, and that their religion is the best and purest of religions? It is strong evidence that their religion is indeed a religion "without partiality," and *therefore* a religion "without hypocrisy." True Christianity asks no aid from the sword of civil authority. It began without the sword, and wherever it has taken the sword, it has perished by the sword. To depend on civil authority for its enforcement is to acknowledge its own weakness, which it can never afford to do. It is able to fight its own battles. Its weapons are moral and spiritual, and not carnal. Armed with these, and these alone, it is not afraid nor "ashamed" to be compared with other religions, and to withstand them single-handed. And the very reason why it is not so afraid or "ashamed" is that it is not the "power of *man*," but "the power of God," on which it depends. True Christianity never shields itself behind majorities. Nero, and the other persecuting Roman emperors, were amply supported by majorities; and yet the pure and peaceable religion of Christ in the end triumphed over them all; and it was only when it attempted, itself, to enforce religion by the arm of authority, that it began to wane. A form of religion that cannot live under equal and impartial laws ought to die, and sooner or later must die.

Laws must have penalties.

An absurd doctrine.

Christian principles exemplified in our secular government.

True Christianity asks no state aid.

Dependence on state an acknowledgment of weakness.

True Christianity never takes advantage of being in the majority.

[*248] *Legal* Christianity is a solecism, a contradiction of terms. When Christianity asks the aid of government beyond mere *impartial protection*, it denies itself. Its laws are divine, and not human. Its essential interests lie beyond the reach and range of human governments. United with government, religion never rises above the merest superstition; united with religion, government never rises above the merest despotism; and all history shows us that the more widely and completely they are separated, the better it is for both.

Legal Christianity a solecism.

State religion is invariably superstition.

Religious states are invariably despotic.

Religion is not — much less is Christianity or any other particular system of religion — named in the preamble to the Constitution of the United States as one of the declared *objects* of government; nor is it mentioned in the clause in question, in our own Constitution, as being essential to anything *beyond* mere human government. Religion is "essential" to much more than human government. It is essential to man's spiritual interests, which rise infinitely above, and are to outlive, all human governments. It would have been easy to declare this great truth in the Constitution; but its framers would have been quite out of their proper sphere in making the declaration. They contented themselves with declaring that religion is essential to good government; providing for the protection of all in its enjoyment, each in his own way, and providing means for the diffusion of general knowledge among the people.

Religion not recognized in Constitution.

Necessity of religion.

Intention of framers of Constitution.

The declaration is not that government is essential to good religion, but that religion is essential to good government. Both propositions are true, but they are true in quite different senses. Good government is essential to religion for the purpose declared elsewhere in the same section of the Constitution; namely, for the purpose of mere *protection*. But religion, morality, and knowledge are essential

How government is essential to religion.

to government, in the sense that they have the instrumentalities for *producing and perfecting* a good form of government. On the other hand, no government is at all adapted for producing, perfecting, or propagating a good religion. Religion, in its widest and best sense, has most, if not all, *the instrumentalities for producing the best form of government. Religion is the parent, and not the offspring, of good government. Its kingdom is to be *first* sought, and good government is one of those things which will be added thereto. True religion is the sun which gives to government all its true lights, while the latter merely acts upon religion by reflection.

How religion is essential to government.

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Properly speaking, there is no such thing as "religion of state." What we mean by that phrase is, the religion of some individual, or set of individuals, taught and enforced by the State. The State can have no religious opinions; and if it undertakes to enforce the teaching of such opinions, they must be the opinions of some natural person, or class of persons. If it embarks in this business, whose opinion shall it adopt? If it adopts the opinions of more than one man, or one class of men, to what extent may it group together conflicting opinions? or may it group together the opinions of all? And where this conflict exists, how thorough will the teaching be? Will it be exhaustive and exact, as it is in elementary literature and in the sciences usually taught to children? and, if not, which of the doctrines or truths claimed by each will be blurred over, and which taught in preference to those in conflict? These are difficulties which we do not have to encounter when teaching the ordinary branches of learning. It is only when we come to teach what lies "beyond the scope of sense and reason"— what from its very nature can only be the object of *faith* — that we encounter these difficulties. Especially

No such thing as "state" religion. Some individual's religion.

Whose shall the state adopt?

How far will it go?

Difficulties peculiar to religious teaching.

Difficulty increased.

is this so when our pupils are children, to whom we are compelled to assume a dogmatical method and manner, and whose faith at last is more a faith in us than in anything else. Suppose the State should undertake to teach Christianity in the broad sense in which counsel apply the term, or the "religion of the Bible," so as also to include the Jewish faith,— where would it begin? how far would it go? and what points of disagreement would be omitted?

Pertinent questions.

If it be true that our law enjoins the teaching of [*250] the *Christian religion in the schools, surely, then, all its teachers should be Christians. Were I such a teacher, while I should instruct the pupils that the Christian religion was true and all other religions false, I should tell them that the law itself was an *unchristian* law. One of my first lessons to the pupils would show it to be unchristian. That lesson would be: "Whatsoever ye would that men should do to you, do ye even so to them; for this is the *law* and the prophets." I could not look the veriest infidel or heathen in the face, and say that such a law was just, or that it was a fair specimen of Christian republicanism. I should have to tell him that it was an outgrowth of false Christianity, and not one of the "lights" which Christians are commanded to shed upon an unbelieving world. I should feel bound to acknowledge to him, moreover, that it violates the spirit of our constitutional guaranties, and is a state religion in embryo; that if we have no right to tax him to support "worship," we have no right to tax him to support religious instructions; that to tax a man to put down his own religion is of the very essence of tyranny; that however small the tax, it is a first step in the direction of an "establishment of religion;" and I should add, that the first step in that direction is the fatal step, because it logically involves the last step.

Religious teaching by state incompatible with Christianity.

Golden rule.

Religious teaching by state an outgrowth of false Christianity.

Injustice to unbelievers.

First step logically involves last step.

Objections suggested.

But it will be asked, How can religion, in this general sense, be essential to good government? Is atheism, is the religion of Buddha, of Zoroaster, of Lao-tse, conducive to good government? Does not the best government require the best religion? Certainly the best government requires the best religion. It is the child of true religion, or of truth on the subject of religion, as well as on all other subjects. But the real question here is not, What is the best religion? but, How shall this best religion be secured? I answer, It can best be secured by adopting the doctrine of this seventh section in our own bill of rights, and which I summarize in two words, by calling it the doctrine of "hands off." Let the State not only keep its own hands off, but let it also see to it that religious sects keep their hands off each *other. Let [*251] religious doctrines have a fair field, and a free, intellectual, moral, and spiritual conflict. The weakest — that is, the intellectually, morally, and spiritually weakest — will go to the wall, and the best will triumph in the end. This is the golden truth which it has taken the world eighteen centuries to learn, and which has at last solved the terrible enigma of "church and state." Among the many forms of stating this truth, as a principal of government, to my mind it is nowhere more fairly and beautifully set forth than in our own Constitution. Were it in my power, I would not alter a syllable of the form in which it is there put down. It is the true republican doctrine. It is simple and easily understood. It means a free conflict of opinions as to things divine; and it means masterly inactivity on the part of the State, except for the purpose of keeping the conflict free, and preventing the violation of private rights or of the public peace. Meantime, the State will impartially aid all parties in their struggles after religious truth, by providing means for the increase of general

Question involved.

Freedom for all religions.

A principle slow to be recognized.

Justice of Constitution.

Freedom provided by Constitution.

knowledge, which is the handmaid of good government, as well as of true religion and morality. It means that a man's right to his own religious convictions, and to impart them to his own children, and his and their right to engage, in conformity thereto, in harmless acts of worship toward the Almighty, are as sacred in the eye of the law as his rights of person or property, and that although in the minority, he shall be protected in the full and unrestricted enjoyment thereof. The "protection" guaranteed by the section in question, means protection to the minority. The majority can protect itself. Constitutions are enacted for the very purpose of protecting the weak against the strong; the few against the many.

Religious rights as sacred as rights to life and property.

"Protection" means protection to minority.

As with individuals, so with governments, the most valuable truths are often discovered late in life; and when discovered, their simplicity and beauty make us wonder that we had not known them before. Such is the character and history of the truth here spoken of. At first sight it seems to lie deep; but on close examination, we find it to be only *a new phase or application of a doctrine with which true religion everywhere abounds. It is simply the doctrine of conquering an enemy by kindness. Let religious sects adopt it toward each other. If you desire people to fall in love with your religion, make it lovely. If you wish to put down a false religion, put it down by kindness, thus heaping coals of fire on its head. You cannot put it down by force; that has been tried. To make the attempt, is to put down your own religion, or to abandon it. Moral and spiritual conflicts cannot be profitably waged with carnal weapons. When so carried on, the enemy of truth and right is too apt to triumph. Even heathen writers have learned and taught this golden truth. Buddha says: "Let a man overcome

Discovery of truths.

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Christian principles.

How to overcome error.

Spiritual warfare.

anger by love, evil by good, the greedy by liberality, and the slanderer by a true and upright life." Christianity is full of this truth, and, as a moral code, might be said to rest upon it. It is *in hoc signo*, by the use of *such weapons*, that Christianity must rule, if it rules at all.

Truths of Buddha.

We are all subject to prejudices, deeper and more fixed on the subject of religion than on any other. Each is, of course, unaware of his own prejudices. A change of circumstances often opens our eyes. No Protestant in Spain, and no Catholic in this country, will be found insisting that the government of his residence shall support and teach its own religion to the exclusion of all others, and tax all alike for its support. If it is right for one government to do so, then it is right for all. Were Christians in the minority here, I apprehend no such a policy would be thought of by them. This is the existing policy of most governments in the world. Christian countries, however, are fast departing from it — witness Italy, Prussia, Spain, England. The true doctrine on the subject is the doctrine of peaceful disagreement, of charitable forbearance, and perfect impartiality. Three men — say, a Christian, an infidel, and a Jew — ought to be able to carry on a government for their common benefit, and yet leave the religious doctrines and worship of each unaffected thereby, otherwise than by fairly and impartially protecting each, and aiding each in his *searches after truth. If they are sensible and fair men, they will so carry on their government, and carry it on successfully, and for the benefit of all. If they are not sensible and fair men, they will be apt to quarrel about religion, and, in the end, have a bad government and bad religion, if they do not destroy both. Surely they could well and safely carry on any other business, as that of banking, without involving their religious

Prejudices of humanity.

Tendency of civilization.

Right principle.

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Nature of government.

opinions, or any acts of religious worship. Government is an organization for particular purposes. It is not almighty, and we are not to look to it for everything. The great bulk of human affairs and human interests is left by any free government to individual enterprise and individual action. Religion is eminently one of these interests, lying outside the true and legitimate province of government.

Erroneous claims.

Counsel say that to withdraw all religious instruction from the schools would be to put them under the control of "infidel sects." This is by no means so. To teach the doctrines of infidelity, and thereby teach that Christianity is false, is one thing; and to give no instructions on the subject is quite another thing. The only fair and impartial method, where serious objection is made, is to let each sect give its own instructions, elsewhere than in the State schools, where of necessity all are to meet; and to put disputed doctrines of religion among other subjects of instruction, for there are many others, which can more conveniently, satisfactorily, and safely be taught elsewhere. Our charitable, punitive, and disciplinary institutions stand on an entirely different footing. There the State takes the place of the parent, and may well act the part of a parent or guardian in directing what religious instructions shall be given.

Only just method.

These principles not new.

The principles here expressed are not new. They are the same, so far as applicable, enunciated by this court in Bloom *v.* Richards, 2 Ohio State, 387, and in McGatrick *v.* Wason, 4 Ohio State, 566. They are as old as Madison, and were his favorite opinions. Madison, who had more to do with framing the Constitution of the United States than any other man, [*254] and *whose purity of life and orthodoxy of religious belief no one questions, himself says:

Statements of Madison.

"Religion is not within the purview of human government." And again he says: "Religion is

essentially distinct from human government, and exempt from its cognizance. A connection between them is injurious to both. There are causes in the human breast which insure the perpetuity of religion without the aid of law."[1]

Religion exempt from cognizance of government.

Support of religion.

In his letter to Governor Livingston, July 10, 1822, he says: "I observe with particular pleasure the view you have taken of the immunity of religion from civil government, in every case where it does not trespass on private rights or the public peace. This has always been a favorite doctrine with me."[2]

A favorite doctrine with Madison.

I have made this opinion exceptionally and laboriously long. I have done so in the hope that I might thereby aid in bringing about a harmony of views and a fraternity of feeling between different classes of society, who have a common interest in a great public institution of the State, which, if managed as sensible men ought to manage it, I have no doubt, will be a principal instrumentality in working out for us what all desire — the best form of government and the purest system of religion.

Good government and good religion.

I ought to observe that, in our construction of the first named of the two resolutions in question, especially in the light of the answer of the Board, we do not understand that any of the "readers," so called, or other books used as mere lesson-books, are excluded from the schools, or that any inconvenience from the necessity of procuring new books will be occasioned by the enforcement of the resolutions.

It follows that the judgment of the Superior Court will be reversed, and the original petition dismissed.

Judgment of the court.

Judgment accordingly.

1 *Ante* page 204.

2 *Ante* page 201. In the same letter he declared: "We are teaching the world . . . that religion flourishes in greater purity without, than with, the aid of government."

America's lesson.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1874.

DECISION RELATIVE TO LIMITATIONS OF STATE AND NATIONAL LEGISLATIVE POWER.[1]

. . . . . .

All governmental power limited.

There is no such thing in the theory of our governments, State and national, as unlimited power in any of their branches. The executive, the legislative, and the judicial departments are all of limited and defined powers.

1 Citizens' Savings and Loan Association of Cleveland v. Topeka, 87 United States Supreme Court reports, 20 Wallace, 655. This case has been quoted and requoted since by the courts of the United States, and has thus now become the unquestioned statement of the law. See Lothrop v. Stedman, decided October, 1875, which says:

Common-law limitations.

"The power of the legislature, therefore, is not unlimited, for the private rights of persons are not subject to an unjust and despotic exercise of power by a legislature, without means of redress. 'The theory of our governments, State and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.'"

13 Blatchford's United States reports, 142.

This is no new doctrine. It has been the law ever since the birth of the nation and was clearly enunciated by the Supreme Court of the United States over a century ago. It was asserted that "the judiciary is a co-ordinate branch of the government, and may declare a statute to be void, as repugnant to the constitution." Justice Chase in that case (decided August, 1798) says:

Principles of American law.

"I cannot subscribe to the omnipotence of a State legislature, or that it is absolute and without control; although its authority should not be expressly restrained by the constitution, or fundamental law of the State. The people of the United States erected their constitutions or forms of government, to establish justice, to promote the general welfare, to secure the blessings of liberty, and to protect their persons and property from violence. The purposes for which men enter into society will determine the nature and terms of the social compact; and as they are the foundation of the legislative power, they will decide what are the proper objects of it. *The nature and ends of legislative power will limit the exercise of it.*

Individual liberty.

"This fundamental principle flows from the very nature of our free republican governments, that no man should be compelled to do what the laws do not require; nor to refrain from acts which the laws permit. There are acts which the federal or State legislature cannot do without exceeding their authority. There are certain vital principles in our free republican governments, which will determine and overrule an apparent and flagrant abuse of legislative power; as to authorize manifest injustice by positive law; or to take away that security for personal liberty or private property, for the protection whereof the government was established. *An act of the legislature, for I cannot call it law, contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority.* The obligation of a law, in governments established on express compact, and on republican principles, must be determined by the nature of the power on which it is founded.

Legislative usurpation not law.

Application of the principle.

"A few instances will suffice to explain what I mean. A law that punished a citizen for an innocent action, or, in other words, for an act which when done, was in vio-

There are limitations of such powers which arise out of the essential nature of all free governments; implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

Nature of governmental limitations.

. . . . . .

lation of no existing law; a law that destroys or impairs the lawful private contracts of citizens; a law that makes a man judge in his own cause; or a law that takes property from A and gives it to B: it is against all reason and justice for a people to intrust a legislature with such powers; and therefore it cannot be presumed that they have done it. The genius, the nature, and the spirit of our State governments, amount to a prohibition of such acts of legislation; and the general principles of law and reason forbid them. The legislature may enjoin, permit, forbid, and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right and prohibit what is wrong; but they cannot change innocence into guilt, or punish innocence as a crime; or violate the right of an antecedent lawful private contract; or the right of private property. To maintain that our federal or State legislature possesses such powers, if they had not been expressly restrained, would, in my opinion, be a political heresy, altogether inadmissible in our free republican governments." Calder v. Bull, 3 Dallas' United States Court reports, 387 et seq.

Importance of constitutional provisions.

The same principles of law had been already clearly defined three years previously (1795) in the case of Vanhorne v. Dorrance. In that case Mr. Justice Paterson, delivering the opinion of the court, said: "Whatever may be the case in other countries, yet, in this, there can be no doubt that every act of the legislature repugnant to the constitution, is absolutely void. . . . I take it to be a clear position, that if a legislative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that in such case, it will be the duty of the court to adhere to the constitution, and to declare the act null and void. The constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are to proceed. It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the judiciary in this country is not a subordinate, but a co-ordinate branch of the government. . . .

Integrity of our constitutions must be preserved.

"The constitution is the origin and measure of legislative authority. It says to legislators, Thus far ye shall go and no farther. Not a particle of it should be shaken; not a pebble of it should be removed. Innovation is dangerous; one encroachment leads to another; precedent gives birth to precedent, what has been done may be done again; thus radical principles are generally broken in upon, and the constitution eventually destroyed. . . .

"It is infinitely wiser and safer, to risk some possible mischiefs, than to vest in the legislature so unnecessary, dangerous, and enormous power as that which has been exercised on the present occasion; a power that, according to the full extent of the argument, is boundless and omnipotent." 2 Dallas's United States reports, 304 et seq.

A quite recent decision reasserts the same principle. In the case of Hurtado v. People of California, delivered in 1884, Mr. Justice Matthews, in delivering the opinion of the court said:

The laws today.

"In this country written constitutions were deemed essential to protect the rights and liberties of the people against the encroachments of power delegated to their governments, and the provisions of Magna Charta were incorporated into bills of rights. *They were limitations upon all the powers of government, legislative as well as executive and judicial.*

Extent of constitutional limitations in America.

"It necessarily happened, therefore, that as these broad and general maxims of liberty and justice held in our system a different place and performed a different function from their position and office in English constitutional history and law, they would

Decision of the court.

Mr. Justice Miller delivered the opinion of the court. . . . It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

All despotism illegal.

The theory of our governments, State and national,

receive and justify a corresponding and more comprehensive interpretation. Applied in England only as guards against executive usurpation and tyranny, *here they have become bulwarks also against arbitrary legislation;* but in that application, as it would be incongruous to measure and restrict them by the ancient customary English law, they must be held to guarantee not particular forms of procedure, *but the very substance of individual rights to life, liberty, and property.* . . .

Arbitrary will is not law.

"It is not every act, legislative in form, that is law. *Law is something more than mere will exerted as an act of power. Arbitrary power,* enforcing its edicts to the injury of the persons and property of its subjects, *is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude.* And the limitations imposed by our constitutional law upon the action of the governments, both State and national, *are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions.* The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, *as well against the power of numbers,* as against the violence of public agents transcending the limits of lawful authority, *even when acting in the name and wielding the force of the government.*

Rights beyond state control.

"This court, speaking by Mr. Justice Miller, in Loan Association v. Topeka, 20 Wallace's reports, 655–662, said: 'It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is nevertheless a despotism. It may be doubted, if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.'"

is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these government, are all of limited and defined powers.

No unlimited power.

There are limitations on such power which grow out of the essential nature of all free governments, — implied reservations of individual right, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife to each other should be so no longer, but that A should therefore be the husband of C, and B the wife of D. Or which should enact that the homestead now owned by A should no longer be his, but should henceforth be the property of B.[1]

Nature of governmental limitations.

[1] Mr. Justice Clifford dissented, taking the position that "except where the constitution has imposed limits upon the legislative power, the rule of law appears to be that the power of legislation must be considered to be as practically absolute, whether the law operates according to natural justice or not in any particular case, for the reasons that courts are not the guardians of the rights of the people of the State, save when those rights are secured by some constitutional provision which comes within judicial cognizance." Thus the question of legislative power was the direct question at issue, and of the nine justices only one dissented from the opinion as delivered by Mr. Justice Miller. The law that legislatures are limited as pointed out in this decision is so well established as hardly to need defense. Yet there are those, and probably always will be, who assert legislative omnipotence, the law and the facts to the contrary notwithstanding. Bishop, in his "First Book of the Law" thus states the law and authorities: "It is pretty plainly the better opinion, in our country, that there are limitations upon the legislative power other than what are expressed in our State and national constitutions,"— citing the following numerous cases:

Theory of unlimited legislative power presented.

American law.

"Independent of that instrument [the Constitution of the United States] and of any express restriction in the constitution of the State, there is a fundamental principle of right and justice, inherent in the nature and spirit of the social compact (in this country at least), the character and genius of our government, the causes from which they sprang, and the purposes for which they were established, that rises above, and restrains and sets bounds to, the power of legislation, which the legislature cannot pass without exceeding its rightful authority. It is that principle which protects the life, liberty, and property of the citizen from violation, in the unjust exercise of legislative power." The Regents of the University of Maryland v. Williams, 9 Gill and Johnson's reports, 408.

Limitations on legislatures.

"It is a fundamental principle, engrafted into the constitution, that all power is originally inherent in the people; and that all officers of the government, whether legislative or executive, are their trustees or servants — therefore, such power, *and such only*, as is delegated to them, can they exercise." Ward v. Bernard, 1 Aikens's Vermont reports, 127. "This question . . . must be considered as settled by the decision in the case of Ward v. Bernard." Lyman v. Mower, 2 Vermont reports, 518.

Fundamental principles.

Erroneous opinions.

"With those judges, who assert the omnipotence of the legislature in all cases where the constitution has not interposed an explicit restraint, I cannot agree. Should there exist, what I know is not only an incredible supposition, but a most remote improbability, a case of the direct infraction of vested rights, too palpable to be questioned, and too unjust to admit of vindication, I could not avoid considering it as a violation of the social compact, and within the control of the judiciary. If, for example, a law were made, without any cause, to deprive a person of his property or to subject him to imprisonment; who would not question its legality, and who would aid in carrying it into effect?" Goshen v. Stonington, 4 Connecticut reports, 225.

Vanhorn v. Dorrance, 2 Dallas's United States reports, 304.

Common-law principles control legislative acts.

Williams v. Robinson, 6 Cushing's report, 335, decided by the supreme judicial court of Massachusetts (1850) says: "The rules of the common law and the principles of natural justice are to be applied in the construction of these statutes." The decision then cites Day v. Savadge, decided by Lord Chief Justice Hobart of England, saying: "Even an act of Parliament, made against natural equity, as to make a man judge in his own case, is void in itself; for *jura naturæ sunt immutabilia*, and they are *leges legum*." Hobart's reports, folio 87. Lord Chief Justice Holt's words in 12 Modern reports, 687, are likewise cited to the same effect: "And what my Lord Coke says in Dr. Bonham's case in his 8 Coke's reports, is far from any extravagancy; for it is a very reasonable and true saying that if an act of Parliament should ordain that the same person should be party and judge, or which is the same thing, judge in his own cause, it would be a void act of Parliament." Coke's words here cited are as follows: "It appears in our books that in many cases the common law will control acts of Parliament and sometimes adjudge them to be utterly void. (7 Coke's reports, 14, Calvin's case; Hobart's reports, 87; 2 Brownlow's reports, Rowles v. Mason, 198, College of Physician's case, 265; Hardres's reports, 140, 466.) For when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void. And therefore in the eighth year of Edward III, Year Books, folio 30 a, b, Thomas Tregor's case on the statute of William II, chapter 38, and article super chartas, chapter 9, Herle saith, Some statutes are made against law and right which those who made them perceiving, would not put them into execution. . . . And the opinion of the court (in the twenty-seventh year of Henry VI, Annuity 41) was that this statute was void. . . . So the statute of the first year of Edward VI, chapter 14, gives chauntries, etc., to the king, saving to the donor, etc., all such rents, services, etc.; and the common law controls it and adjudges it void as to services," and other citations. 8 Coke's reports, 118 et seq.

Hobart's decision.

Coke's theory approved.

Coke's decision.

Statutes declared void.

The legislature not supreme.

"*Under our form of government the legislature is not supreme.* It is only one of the organs of that absolute sovereignty which resides in the whole body of the people. Like other departments of the government, *it can only exercise such powers as have been delegated to it;* and when it steps beyond that boundary, its acts, like those of the most humble magistrate in the State who transcends his jurisdiction, *are utterly void.* . . . It is readily admitted that the two houses, subject only to the qualified negative of the governor, possess all 'the legislative power of this State;' but the question immediately presents itself, What is that 'legislative power;' and how far does it extend? Does it reach the life, liberty, or property of a citizen who is not charged with a transgression of the laws, and when the sacrifice is not demanded by a just regard for the public welfare? In Wilkinson v. Leland, 2 Peters's United States Supreme Court reports, 657, Mr. Justice Story says:

Supreme Court decision.

"'The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least, no court of justice in this country would be warranted in assuming that the power to violate and disregard them — a power so repugnant to the common principles of justice and civil liberty — lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well being, without very strong and direct expressions of such an intention.'

Justice the supreme law.

"He added: 'We know of no case in which a legislative act to transfer the property of A to B without his consent, has ever been held a constitutional exercise of leg-

islative power in any State in the union. On the contrary, it has been constantly resisted as inconsistent with just principles, by every judicial tribunal in which it has been attempted to be enforced.' See also 2 Kent's Commentaries, 13, 340, and cases there cited.

Uniformity of decisions.

"The security of life, liberty, and property, lies at the foundation of the social compact; and to say that this grant of 'legislative power' includes the right to attack private property, is equivalent to saying that the people have delegated to their servants the power of defeating one of the great ends for which the government was established. *If there was not one word of qualification in the whole instrument*, I should feel great difficulty in bringing myself to the conclusion that the clause under consideration had clothed the legislature with despotic power; and such is the extent of their authority if they can take the property of A, either with or without compensation, and give it to B. 'The legislative power of the State' does not reach to such an unwarrantable extent. *Neither life, liberty, nor property*, except when forfeited by crime, or when the latter is taken for public use, *falls within the scope of this power*. Such, at least, are my present impressions.

Social contract cannot be violated.

"But the question does not necessarily turn on the section granting legislative power. The people have added negative words, which should put the matter at rest. 'No member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.' Constitution, article 7, section 1. The words, 'by the law of the land,' as here used, do not mean a statute passed for the purpose of working the wrong. That construction would render the restriction absolutely nugatory, and turn this part of the constitution into mere nonsense. The people would be made to say to the two houses, 'You shall be vested with "the legislative power of the State;" but no one "shall be disfranchised, or deprived of any of the rights or privileges" of a citizen, unless you pass a statute for that purpose:' in other words, 'You shall not do the wrong, unless you choose to do it.'" Taylor v. Porter, 4 Hill's New York Supreme Court reports, 144 et seq.

Additional safeguard in declaration of rights.

Bloodgood v. The Mohawk and Hudson Railroad Company, 18 Wendell's New York Court of Errors reports, 56 et seq.

Varick v. Smith, 5 Paige's New York Chancery reports, 137, 159.

"That government can scarcely be deemed to be free, where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred. At least no court of justice in this country would be warranted in assuming that the power to violate and disregard them — a power so repugnant to the common principles of justice and civil liberty — lurked under any general grant of legislative authority, or ought to be implied from any general expressions of the will of the people. The people ought not to be presumed to part with rights so vital to their security and well being, without very strong and direct expressions of such an intention." Justice Story in delivering the opinion of the court in Wilkinson v. Leland and others, 2 Peters's United States Supreme Court reports, 656 et seq.

The will of the state amenable to law.

"The Court, who, after a full consideration on the subject, were clearly of the opinion that the plaintiffs could claim no title under the act in question [a statute of 1712 conflicting with common-law rights] as it was against common right, as well as against Magna Charta. . . . *That act was, therefore, ipso facto, void.* That no length of time could give it validity, being originally founded on erroneous principles." Bowman v. Middleton, 1 Bay's South Carolina reports, 254 et seq.

Any act conflicting with common-law rights is void.

Cochran v. Van Surley, 20 Wendell's New York Court of Errors reports, opinion delivered by Chancellor Walworth, cites Chief Justice Marshall's words in the case of Fletcher v. Peck: "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power." 10 United States Supreme Court reports, 135, 136.

Medford v. Learned, 16 Massachusetts Supreme Court reports, 217.

Bates v. Kimball, 2 Daniel Chipman's Vermont Supreme Court reports. 89, 90.

"Lord Coke says that if an act of Parliament should ordain that the same person

Massachusetts approves Coke's law.

should be party and judge, or which is the same thing, judge in his own cause, it would be a void act of Parliament; and Lord Holt says that this is a very reasonable and true saying, and free from any extravagancy. And no doubt it is." Commonwealth v. Worcester, 3 Pickering's Massachusetts Supreme Court reports, 472 ex parte Martin, 13 Arkansas Supreme Court reports, 206.

Statutes violative of common-law rights void.

"So it has been laid down generally," says Bishop, "that 'statutes passed against plain and obvious principles of common right and common reason, *are absolutely null and void, as far as they are calculated to operate against those principles.*' Ham v. Mc Claws, 1 Bay's South Carolina reports, 93, 98; Barksdale v. Morrison, Harper's South Carolina reports, 101.

English law.

"This doctrine commends itself, moreover, by a considerable weight of English as well as of American judicial authority. Day v. Savage, Hobart, 85, 87; Bonham's case, 8 Coke's reports, 114, 118, where it is said: 'It appears in our books that in many cases the common law will control acts of Parliament, and sometimes adjudge them to be utterly void; for, when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void.' London v. Wood, 12 Modern reports, 669, 687; 1 Fonblanque's Equity, chapter 11, section 3; Sharpe v. Bickerdyke, 3 Dow, 102; 1 Blackstone's Commentaries, 41. . . .

Ground of unconstitutionality.

"The ground is, that such statutes transcend the powers which the people have vested, or could vest, in the legislative body, which is itself circumscribed, like the judicial and executive departments." Bishop's First Book of the Law, book 2, chapter 9; Ram's Legal Judgments (American edition, 1871), pages 35, 39.

Common-law principles,

There are certain principles of law that bind states themselves as well as their agents. One of these principles is that any state cannot at any time impose any law upon that state curtailing its freedom of action at any time subsequent. Perpetua lex est nullam legem humanum ac positivam perpetuam esse; et clausula quae abrogationem excludit, ab initis non valet: "It is a perpetual law that there is no human and positive law perpetual; and the clause which excludes disannulling, is not valid from the beginning." This principle of law was recognized by Thomas Jefferson in his act declaratory of religious rights in Virginia in 1785, in the following words: "To declare this act irrevocable, would be of no effect in law."

It is because of the nature of these fundamental principles of law which it is impossible for any man understandingly to contradict, that makes the common law — the sum total of these principles — the controller of all law. Bishop sets this forth very clearly in his book on the "Nature of the Law," section 103 et seq.:

Nature of the common law.

"The law is a system of principles, and *the principles are the law itself*, while the cases are to be received only in the nature of evidence, tending more or less strongly to prove the principles, namely, that the common-law principles do not, like the statutory ones, rest in a precise form of words. And a great part of the skill, both of judges and of legal writers, consists in the selection of such language as shall in the most accurate and clear manner, convey to the reader the image of those principles, which, unseen by the outward eye, lie as pictures before the eye of the legal understanding, and form together the body of our common or unwritten law, the same as the statute books do our written law.

Its supreme authority.

"Now, when the principles are ascertained, *they are just as authoritative upon the courts, and control the decisions in particular cases with the same absolute sway, as the express words of a legislative enactment.* Commonwealth v. Chapman, 13 Metcalf's Massachusetts Supreme Court reports, 68, 70; Martin v. Martin, 25 Alabama Supreme Court reports, 201; Powell v. Brandon, 24 Mississippi Supreme Court reports, 343. The difference between a common-law and statutory principle is simply this, that, while the former may not be always readily ascertained to exist, or its terms or limits may be a little uncertain or undefined; there is ordinarily no question as to the existence of the latter, and, being clothed in exact words, *its limits are generally supposed to be ascertainable with greater certainty, though, in fact, the contrary of this statement is often true.* . . .

"The law is what 'authority' determines it to be, and the voice of 'authority' is nothing other than the language of those principles which constitute the law. . . .

Of what the law consists.

"The law consists of rule, of reason,— or, as the expression was in a previous chapter, of legal principles,— and not of mere points as presented in particular cases. Therefore he who, whether as a judge, or as a lawyer arguing a case, or as a legal author, brings forward new applications of old principles, does not attempt the introduction of any novelty; he merely expounds anew the old.

Massachusetts decision.

"This matter was once stated by a very able Massachusetts judge as follows: 'It is one of the great merits and advantages of the common law, that, instead of a series of detailed practical rules, established by positive provisions, and adapted to the precise circumstances of particular cases, which would become obsolete and fail when the practice and course of business to which they apply should cease or change, the common law consists of a few broad and comprehensive principles, founded on reason, natural justice, and enlightened public policy, modified and adapted to the circumstances of all the particular cases which fall within it. These general principles of equity and policy are rendered precise, specific, and adapted to practical use, by usage, which is the proof of their general fitness and common convenience, but still more by judicial exposition; so that when in a course of judicial proceeding by tribunals of the highest authority, the general rule has been modified, limited, and applied, according to particular cases, such judicial exposition, when well settled and acquiesced in, becomes itself a precedent, and forms a rule of law for future cases under like circumstances.' Chief Justice Shaw, in Norway Plains Co. v. Boston and Maine Railroad, 1 Gray's Massachusetts Supreme Court reports, 263, 267, 268. And for similar observation see Bell v. The State, 1 Swan's Tennessee Supreme Court reports, 42."

Among the common-law writers and jurists there is no difference of opinion as to this fundamental nature of the common law. Judge Cooley, in accordance with the ideas set forth in these decisions, lays down the following as to what the law is:

Cooley's view of the law.

"The code of to-day is therefore to be traced rather in the spirit of judicial decisions than in the letter of the statute. The process of growth has been something like the following: Every principle declared by a court in giving judgment is supposed to be a principle more or less general in its application, and which is applied under the facts of the case, because, in the opinion of the court, the facts bring the case within the principle. The case is not the measure of the principle; it does not limit and confine it within the exact facts, but it furnishes an illustration of the principle which perhaps might still have been applied had some of the facts been different. Thus, one by one, important principles become recognized through adjudications which illustrate them, and which constitute authoritative evidence of what the law is when other cases shall arise.

Out of the facts the law arises.

Growth of the recognition of law.

"But cases are seldom exactly alike in their facts; they are, on the contrary, infinite in their diversities. And as numerous controversies on differing facts are found to be within the reach of the same general principle, the principle seems to grow and expand, and does actually become more comprehensive, though so steadily and insensibly under legitimate judicial treatment that for the time the expansion passes unobserved. But new and peculiar cases must also arise from time to time, for which the courts must find the governing principle; and these may either be referred to some principle previously declared, or to some one which now, for the first time, there is occasion to apply. But a principle newly applied is not supposed to be a new principle; on the contrary, it is assumed that from time immemorial it has constituted a part of the common law of the land, and that it has only not been applied before, because no occasion has arisen for its application. This assumption is the very groundwork and justification for its being applied at all, because the creation of new rules of law, by whatsoever authority, can be nothing else than legislation; and the principle now announced for the first time must always be so far in harmony with the great body of the law that it may naturally be taken and deemed to be a component part of it, as the decision assumes it to be." Torts, pages, 12, 13.

No law new

Precedent.

Upon this principle as here stated rests the authority of the precedent. "Precedents against law or the law's reason must be set aside. . . . There is such a thing as idolatry of precedents, and an idolatry it is, which, at times, has slaughtered justice at her own altars." Lieber, Hermeneutics, chapter vii, section 14.

SUPREME COURT OF WISCONSIN.

DECISION AGAINST THE READING OF THE BIBLE IN THE PUBLIC SCHOOLS.[1]

NEW YORK "INDEPENDENT."

Approval of decision.

We have read, with hearty approval, the opinions recently delivered in the Supreme Court of Wisconsin in regard to the question of the Bible in the public schools of that State, the full text of which has been published in the Albany "Law Journal." This reading only confirms our opinion of this decision, as heretofore expressed.

Opinions delivered.

Mr. Justice Lyon delivered the opinion of the court, and Messrs. Justices Cassody and Orton delivered concurring opinions. The case before the court was that of a petition for a *mandamus*, commanding the School Board in the city of Edgerton to cause the teachers in one of the public schools of that city to discontinue the practice of reading, during school-hours, portions of King James's Version of the Bible. The petitioners for the *mandamus* were residents and tax-payers in Edgerton, and presumptively Catholics in their religious faith, although this fact is not stated in these deliverances. They complained of the practice above referred to.

Statement of case.

This petition brought squarely before the court the question whether such a practice is consistent with the Constitution of the State of Wisconsin; and this question the court unanimously answered in the negative. And that our readers may the better understand the case, we submit in the following order the several points decided:

Summary of points decided.

1. The first point is the construction of article x, section 3, of the Constitution of the State, which declares that "the Legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable, and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years, and *no sectarian instruction shall be allowed therein.*"

Reading of Bible sectarian instruction.

The court held that the reading of King James's Version of the Bible in the public schools of the State during school-hours is "sectarian instruction" within the meaning of this constitutional prohibition, and

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Favorable reception of decision.

[1] The favor with which this decision of the Wisconsin Supreme Court was received by the public, by liberal Christians as well as by unbelievers, is well expressed in the comments on and summary of the case by the New York "Independent," a leading religious journal of the country. The summary is inserted prefatorial to the opinion of Justice Orton following. The editorial appeared in the "Independent" of July 19, 1890, and expresses the views of the most careful thinkers.

hence inconsistent therewith. Mr. Justice Lyon said that the prohibition "manifestly refers exclusively to instruction in *religious* doctrines," and in such doctrines as "are believed by some religious sects and rejected by others." The court took judicial knowledge of the fact that King James's Version of the Bible is not accepted and used by *all* "religious sects" in Wisconsin, but is accepted by some of these sects and rejected by others. Hence, as between them, all having the same constitutional rights, the court held that version to be a "sectarian" book, and the reading of it in the manner and for the purpose set forth in the complaint to be forbidden by the Constitution of the State.

Constitution construed.

How any other conclusion could have been drawn from the premises, we are not able to see. We presume that there is not a Protestant in Wisconsin who would hesitate a moment on the point, if the book read had been the Douay Version of the Bible, which is acceptable to Catholics, or the Koran, or the Book of Mormon. The reading of such a book as a part of school exercises, whether for worship or religious instruction, would be offensive to Protestants, and they would have good cause for complaint, just as the reading of King James's Version, which is sometimes called the Protestant Bible, is offensive to Catholics. It should not be forgotten that, under the Constitution of Wisconsin, Catholics and Protestants have on this subject precisely the same rights, and that neither can claim any precedence over the other. The Constitution of that State makes no distinction between them, and determines no question relating to their differences, or any other religious differences. It deals with all the people simply as *citizens*, no matter what may be their religious tenets, or whether they have any such tenets.

Correctness of conclusion.

Equality of Catholics and Protestants.

2. The second point decided is that "the practice of reading the Bible in such schools can receive no sanction, from the fact that pupils are not compelled to remain in the school while it is being read." On this point we quote, as follows, the language of Mr. Justice Lyon:

"When, as in this case, a small minority of the pupils in the public school is excluded, for any cause, from a stated school exercise, particularly when such cause is apparent hostility to the Bible, which a majority of the pupils have been taught to revere, from that moment the excluded pupil loses caste with his fellows, and is liable to be regarded with aversion, and subjected to reproach and insult. But it is a sufficient refutation of the argument that the practice in question tends to destroy the equality of the pupils, which the Constitution seeks to establish and protect, and puts a portion of them at a serious disadvantage in many ways with respect to the others."

Tendency to destroy equality.

The plain fact is that *not* to compel the attendance upon such reading, of the children of parents who object to it, for the sake of continuing the reading, is a virtual confession that the reading has a "sectarian" character, as between those who desire it and those who object to it. It is merely an attempt to get round what is apparent on the face of the case.

Argument virtually conceded.

Reading of Bible an act of worship.

3. The third point decided is that "the reading of the Bible is an act of worship, as that term is defined in the Constitution; and, hence, the tax-payers of any district who are compelled to contribute to the erection and support of common schools, have the right to object to the reading of the Bible, under the Constitution of Wisconsin, article 1, section 18, clause 2, declaring that no man shall be compelled to . . . erect or support any place of worship." This provision is in what is called the "Declaration of Rights." The opinion delivered by Mr. Justice Cassody on this point is, to our understanding, clear and conclusive. Bible-reading in public schools has the form and intention of religious worship; and this being the fact, then to compel the people by taxation to erect and support public schools in which such reading is a practice, is to compel them by law to erect and support places of worship. The fact that these places are also used for other purposes does not relieve the difficulty. The Constitution expressly declares that the people shall not "be compelled to erect *any* place" that is used for the purpose of worship. To tax a man to erect and support a public school, and then to introduce the element of religious worship into that school, is to make a combination which the Constitution forbids.

State money expended for religious instruction.

4. The fourth point decided is that, "as the reading of the Bible at stated times in a common school is religious instruction, the money drawn from the State treasury in support of such school is 'for the benefit of a religious seminary,' within the meaning of the Constitution of Wisconsin, article 1, section 18, clause 4, prohibiting such an appropriation of the funds of the State." The design of the clause referred to is to prevent the State from using the public funds to defray the expenses of religious instruction; and this design is frustrated just as really when these funds are used to support common schools in which such instruction is given, as it would be if these funds were used to support "religious societies or religious or theological seminaries." Mr. Justice Cassody, in his opinion, sets forth this point very clearly.

We have thus given the pith of the argument on this subject as stated by the three justices of the Supreme Court of Wisconsin. We

Conclusions sound.

see no escape from the conclusion reached, and have no desire to escape it, since we thoroughly believe in its correctness everywhere. To the argument that "the exclusion of Bible-reading from the district schools is derogatory to the value of the Holy Scriptures, a blow to their influence upon the conduct and consciences of men, and disastrous to the cause of religion," Mr. Justice Lyon thus replied:

Sacred things should be left in sacred hands.

"We most emphatically reject these views. The priceless truths of the Bible are best taught to our youth in the church, the Sabbath and parochial schools, the social religious meetings, and above all by parents in the home circle. There those truths may be explained and enforced, the spiritual welfare of the child guarded and protected, and his spiritual nature directed and cultivated, in accordance with the dictates of the parental conscience. The Constitution does not interfere with such

teaching and culture. It only banishes theological polemics from the district schools. It does this, not because of any hostility to religion, but because the people who adopted it believed that the public good would thereby be promoted, and they so declared in the preamble. Religion teaches obedience to law, and flourishes best where good government prevails. The constitutional prohibition was adopted in the interests of good government, and it argues but little faith in the vitality and power of religion, to predict disaster to its progress because a constitutional provision, enacted for such a purpose, is faithfully executed."

Constitution excludes religion from state schools only.

The doctrine of the Constitution of Wisconsin, as thus settled by the Supreme Court of that State, is, in our judgment, the true doctrine for every State in the Union. It remits the question of religious instruction, as to what it shall be, as to the agency giving it, and as to the cost thereof, to voluntary private and individual effort, and devotes the public school, created and regulated by law, and supported by a general taxation of the people, exclusively to secular education. This principle is in harmony with the nature and structure of our political institutions, and is, moreover, just and equitable as between religious sects. It favors no one of them, and proscribes no one of them; and, while it leaves them all free to propagate their religious beliefs in their own way, and at their own expense, it gives to the whole people, at the cost of the whole, a system of popular education that is certainly good as far as it goes, and is *all* that the State can give, without itself becoming a religious propagandist. Catholics and Protestants alike ought to be satisfied with it. There is no other basis on which the school question can be justly settled as between different religious sects.

The true doctrine.

All religious sects free and equal.

Only just basis.

OPINION BY JUSTICE H. S. ORTON.

I most fully and cordially concur in the decision, and in the opinions of Justices Lyon and Cassody, in this case.

Decision concurred in.

It is not needful that any other opinion should be written, but I thought it proper to state briefly some of the reasons which have induced such concurrence in the decision.

"The right of every man to worship Almighty God according to the dictates of his own conscience, shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship, . . . nor shall any control or interference with the rights of conscience be permitted, or any

Provisions of Constitution.

Provisions of Constitution.

preference be given by law to any religious establishments or modes of worship." Constitution, article 1, section 18.

"No religious test shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion." Constitution, article 1, section 19.

"The interest of 'the school fund,' and all other revenues derived from the school lands, shall be exclusively applied," etc., "to the support and maintenance of *common schools* in each school-district," etc. Article 10, section 2, subdivision 1.

"The Legislature shall provide by law for the establishment of district schools which shall be as nearly *uniform* as practicable; and such schools shall be free, and without charge for tuition to *all* children between the ages of four and twenty years; and no *sectarian* instruction shall be allowed therein." Article 10, section 3.

Sectarian instruction not allowed.

"Each town and city shall be required to raise *by tax* annually, for the support of *common schools* therein, a sum not less," etc. Article 10, section 4. "Provision shall be made by law, for the distribution of the income of the school fund among the several towns and cities of the State, for the support of *common schools* therein," etc. Article 10, section 5.

Complete separation of the State from religion.

These provisions of the Constitution are cited together to show how completely this State, as a civil government, and all its civil institutions, are divorced from all possible connection or alliance with any and all religions, religious worship, religious establishments, or modes of worship, and with everything of a religious character or appertaining to religion; and

Complete protection to all.

to show how completely all are protected in their religion and rights of conscience, and that no one shall

ever be taxed or compelled to support any religion or place of worship, or to attend upon the same, and more especially to show that our *common schools*, as one of the institutions of the State created by the Constitution, stand, in all these respects, like any other institution of the State, completely excluded from all possible connection or alliance with religion, or religious worship, or with anything of a religious character, and guarded by the constitutional prohibition that "no sectarian instruction shall be *allowed* therein." They show also that the common schools are free to all alike, to all nationalities, to all sects of religion, to all ranks of society, and to all complexions. For these equal privileges and rights of instruction in them, all are taxed equally and proportionately. The constitutional name, "common schools," expresses their equality and universal patronage and support. *Common* schools are not common, as being low in character or grade, but *common* to all alike, to everybody and to all sects or denominations of religion, but without bringing religion into them. The common schools, like all the other institutions of the State, are protected by the Constitution from all "control or interference with the rights of conscience," and from all preferences given by law to any religious establishments or modes of worship. As the State can have nothing to do with religion, except to protect every one in the enjoyment of his own, so the common schools can have nothing to do with religion, in any respect whatever. They are as completely *secular* as any of the other institutions of the State, in which all the people, alike, have equal rights and privileges. The people cannot be taxed for religion in schools, more than anywhere else. Religious instruction in the common schools, is clearly prohibited by these general clauses of the Constitution, as religious instruction or worship in any other department

Taxes not to be used to pay for religious teaching.

Complete separation of the schools from religion.

Our free public school

Nature of our public schools.

No preference to be shown.

Schools absolutely secular.

An important point

Constitution intended to exclude everything pertaining to religion.

of State, supported by the revenue derived from taxation. The clause that "no sectarian instruction shall be allowed therein," was inserted *ex industria* to exclude everything pertaining to religion. They are called by those who wish to have not only religion, but their own religion, taught therein, "godless schools." They are godless, and the educational department of the government is godless, in the same sense that the executive, legislative, and administrative departments are godless. So long as our Constitution remains as it is, no one's religion can be taught in our common schools. By religion, I mean religion as a system, not religion in the sense of natural law. Religion in the latter sense is the source of all law and government, justice and truth. Religion as a system of belief cannot be taught without offense to those who have their own peculiar views of religion, no more than it can be without offense to the different sects of religion. How can religion, in this sense, be taught in the common schools, without taxing the people for or on account of it. The only object, purpose, or use for taxation by law in this State, must be exclusively *secular*. There is no such source and cause of strife, quarrel, fights, malignant opposition, persecution and war, and all evil in the State, as religion. Let it once enter into our civil affairs, our government would soon be destroyed. Let it once enter into our common schools, they would be destroyed. Those who made our Constitution, saw this, and used the most apt and comprehensive language in it, to prevent such a catastrophe. It is said, If reading the Protestant version of the Bible in school is offensive to the parents of some of the scholars, and antagonistic to their own religious views, *their children can retire*.[1] They ought not to

Principle of taxation.

Disastrous effects of state religions.

Intolerance manifested by religious partisans.

[1] The intolerance manifested by these religious partisans in Wisconsin is quite frequently displayed in the speeches and writings of the

be compelled to go out of the school for such a reason, for one moment. The suggestion itself concedes the whole argument. That version of the Bible is hostile to the belief of many who are taxed to support the common schools, and who have equal rights and privileges in them. It is a source of religious and sectarian strife. That is enough. It violates the letter and spirit of the Constitution. No State Constitution ever existed, that so completely excludes and precludes the possibility of religious strife in the civil affairs of the State, and yet so fully protects all alike in the enjoyment of their own religion. All sects and denominations may teach the people their own doctrines in all proper places. Our Constitution protects all, and favors none. But they must keep out of the common schools and civil affairs. It requires but little argument to prove that the Protestant version of the Bible, or any other version of the Bible, is the source of religious strife and opposition, and opposed to the religious belief of many of our

Suggestion concedes argument.

Violative of constitutional provisions.

Equality insured.

All versions of the Bible sectarian.

advocates of religious legislation. Especially is this true of those who are so strenuously working for Sunday laws. Many quotations might be made, but the following sufficiently illustrate the spirit of the movement:

Intolerance of advocates of religious legislation.

Rev. E. B. Graham, an ardent Sunday-law advocate, in an address delivered at York, Nebraska, said: "We might add in all justice, if the opponents of the Bible do not like our government and its Christian features, *let them go to some wild, desolate land*, and in the name of the devil, and for the sake of the devil, subdue it, and set up a government of their own on infidel and atheistic ideas; and then, if they can stand it, *stay there till they die.*" "Christian Statesman," May 21, 1885.

Intolerant statement of a Sunday-law advocate.

At a convention in New York City, February 27, 1873, Dr. Jonathan Edwards, in a speech, after saying that Sabbatarians must be classed as, and named, "atheists," continued: "What are the rights of the atheist? . . . *I would tolerate him as I would a conspirator.* The atheist is a dangerous man. . . . Tolerate atheism, sir? There is nothing out of hell that I would not tolerate as soon. The atheist may live, as I said, but, God helping us, the taint of his destructive creed shall not defile any of the civil institutions of all this fair land! Let us repeat: atheism and Christianity are contradictory terms. They are incompatible systems. *They cannot dwell together on the same continent.*"

Intolerance perfected.

Protestantism a sect.

people. It is a *sectarian* book. The Protestants were a very small sect in religion, at one time, and they are a sect yet, to the great Catholic Church against whose usages they protested, and so is their version of the Bible sectarian, as against the Catholic version of it.

Value of our public schools.

The common school is one of the most indispensable, useful, and valuable civil institutions this State has. It is democratic, and free to all alike, in perfect equality, where all the children of our people stand on a common platform, and may enjoy the benefits of an equal and common education. An enemy to our common schools is an enemy to our State government.

A parallel act.

It is the same hostility that would cause any religious denomination, that had acquired the ascendency over all others, to remodel our Constitution, and change our government and all of its institutions, so as to make them favorable only to itself, and exclude all others from their benefits and protection.

Religion needs no state support.

In such an event, religious and sectarian instruction will be given in all schools. Religion needs no support from the state. It is stronger and much purer without it.

Importance of case.

This case is important and timely. It brings before the courts a case of the plausible, insidious, and apparently innocent entrance of religion into our civil affairs, and of an assault upon the most valuable provisions of the Constitution. Those provisions should be pondered and heeded by all of our people, of all nationalities and of all denominations of religion, who desire the perpetuity and value the blessings of our free government. That such is their meaning and interpretation, no one can doubt, and it requires no citation of authorities to show. It is religion and sectarian instruction that are excluded by them. Morality and good conduct may be inculcated in the common schools, and should be.

Evil results of church and state.

The connection of church and state corrupts religion, and makes the state despotic.

THE "CHRISTIAN NATION" DECISION.[1]

Feb. 29, 1892.

SUPREME COURT OF THE UNITED STATES.

THE RECTOR, CHURCH WARDENS, AND VESTRYMEN OF THE CHURCH OF THE HOLY TRINITY, Plaintiffs in Error,
v.
THE UNITED STATES.

In error to the Circuit Court of the United States for the Southern District of New York.

[DECIDED FEBRUARY 29, 1892.]

Mr. Justice Brewer delivered the opinion of the court.

Plaintiff in error is a corporation, duly organized and incorporated as a religious society under the laws of the State of New York. E. Walpole Warren was, prior to September, 1887, an alien residing in England. In that month the plaintiff in error made a contract with him, by which he was to remove to the city of New York and enter into its service as rector

Alien pastor employed.

[1] The Church of the Holy Trinity *v.* U. S., 143 U. S., 457.

[2] The year 1892 was a remarkable one in the history of the United States, for in that year the national government, in all three of its branches,— judicial, legislative, and executive,— departed from the fundamental principle laid down in the Constitution of separation of religion and the state, and gave sanction to religious legislation and to the union of religion and the state; the *judicial,* February 29, in the decision of the Supreme Court declaring this a "Christian nation;" the *legislative,* July 14 (the Senate) and July 19 (the House), in the legislation conditioning the five-million-dollar appropriation to the Chicago (1893) World's Columbian Exposition upon Sunday closing; and the *executive,* August 5, in the President of the United States, President Harrison, approving this legislation by attaching his signature to it.

1892 a remarkable year.

While the real decision in this case, from a legal standpoint, was not that the United States is a "Christian nation," but rather that the alien labor law passed by Congress in 1887 referred only to *manual* labor, and not to *professional, skilled,* or *"brain"* labor, and hence could not apply to the case in question, the conclusion drawn from the arguments adduced in the *obiter dictum* portion of the opinion (see pages 498 to 510) to prove that this is a "religious peo-

The real decision and the "Christian nation" *obiter dictum.*

and pastor; and, in pursuance of such contract, Warren did so remove and enter upon such service. It is claimed by the United States that this contract on the part of the plaintiff in error was forbidden by chapter 164, 23 Stat., 332, and an action was commenced to recover the penalty prescribed by that act. The Circuit Court held that the contract was within the prohibition of the statute, and rendered judgment accordingly (36 Fed. Rep., 303); and the single question presented for our determination is whether it erred in that conclusion.

Claimed in violation of law of 1887.

ple" and "a Christian nation," has been seized upon by the advocates of religious legislation and of a union of religion and the state in this country, as support of the highest order, and as though this was the real question at issue in the case, and *the* decision of the court. Viewed from the standpoint of the *obiter dictum* alone, which, it may be observed, constitutes over one half of the entire decision, and from the use that is made of it, this is true. This portion of the opinion does declare that "this is a Christian nation;" and wherever the question of Sunday legislation, religious instruction in the public schools, or a religious amendment to the Constitution has come up since this decision was rendered, this *obiter dictum,* or so-called "decision," of the Supreme Court of the United States, has been cited and appealed to. In effect, therefore, this was the decision of the Court.

Testimony from Justice Brewer himself.

And this view of the matter is confirmed by a statement from the justice himself who delivered the opinion. In 1905 Justice Brewer delivered three lectures on "The United States a Christian Nation," before the Haverford College, of Haverford, Pennsylvania. The second paragraph of the first lecture reads:

"This republic is classified among the Christian nations of the world. It was so formally declared by the Supreme Court of the United States. In the case of Holy Trinity Church *v.* United States, 143 United States, 471, that court, after mentioning various circumstances, added, 'These and many other matters which might be noticed, add a volume of unofficial declarations to the mass of organic utterances that this is a Christian nation.'" "The United States a Christian Nation," the John C. Winston Company, Philadelphia, 1905, page 11.

This is evidence that Justice Brewer himself regarded this declaration in this decision as at least a very conspicuous, if not the leading, feature of it.

The first section describes the act forbidden, and is in these words:

The law in question.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act it shall be unlawful for any person, company, partnership, or corporation, in any manner whatsoever to repay the transportation, or in any way assist or encourage the importation or migration of any alien or aliens, any foreigner or foreigners, into the United States, its Territories, or the District of Columbia, under contract or agreement, parol or special, express or implied, made previous to the importation or migration of such alien or aliens, foreigner or foreigners, to perform labor or service of any kind in the United States, its Territories, or the District of Columbia."

The act within the letter of the law.

It must be conceded that the act of the corporation is within the letter of this section, for the relation of rector to his church is one of service, and implies labor on the one side with compensation on the other. Not only are the general words labor and service both used, but also, as it were, to guard against any narrow interpretation and emphasize a breadth of meaning, to them is added "of any kind;" and, further, as noticed by the Circuit Judge in his opinion, the fifth section, which makes specific exceptions, among them professional actors, artists, lecturers, singers, and domestic servants, strengthens the idea that every kind of labor and service was intended to be reached by the first section. While there is great force to this reasoning, we cannot think Congress intended to denounce with penalties a transaction like that in the present case. It is a familiar rule that a thing may be within the letter of the statute and yet not within the statute, because not within the spirit, nor within the intention of its makers. This has been often as-

Not the intent of Congress.

serted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act. As said in Plowden, 205: "From such cases, it appears that the sages of the law heretofore have construed statutes quite contrary to the letter in some appearance, and those statutes which comprehend all things in the letter they have expounded to extend to but some things, and those which generally prohibit all people from doing such an act, they have interpreted to permit some people to do it, and those which include every person in the letter, they have adjudged to reach to some persons only, which expositions have always been founded upon the intent of the Legislature, which they have collected sometimes by considering the cause and necessity of making the act, sometimes by comparing one part of the act with another, and sometimes by foreign circumstances."

Terms used broader than meaning intended.

Intent of Legislature ascertained.

In Pier Co. *v.* Hannan (3 B. & Ald., 266), C. J. Abbott quotes from Lord Coke as follows: "Acts of Parliament are to be so construed as no man that is innocent or free from injury or wrong be, by a literal construction, punished or endangered." In the case of the State *v.* Clark (5 Dutcher, 96, 99), it appeared that an act had been passed making it a misdemeanor to willfully break down a fence in the possession of another person. Clark was indicted under that statute. The defense was that the act of breaking down the fence, though willful, was in the exercise of a legal right to go upon his own lands. The trial court re-

Lord Coke on construction of law.

jected the testimony offered to sustain the defense, and the Supreme Court held that this ruling was error. In its opinion the court used this language: "The act of 1855, in terms, makes the willful opening, breaking down, or injuring of any fences belonging to or in possession of any other person a misdemeanor. In what sense is the term willful used? In common parlance, willful is used in the sense of intentional, as distinguished from accidental or involuntary. Whatever one does intentionally he does willfully. Is it used in that sense in this act? Did the Legislature intend to make the intentional opening of a fence for the purpose of going upon the land of another, indictable if done by permission or for a lawful purpose? . . . We cannot suppose such to have been the actual intent. To adopt such a construction would put a stop to the ordinary business of life. The language of the act, if construed literally, evidently leads to an absurd result. If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. The court must restrain the words. The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed." In United States *v.* Kirby (7 Wall., 482, 486), the defendants were indicted for the violation of an act of Congress, providing "that if any person shall knowingly and willfully obstruct or retard the passage of the mail, or of any driver or carrier, or of any horse or carriage carrying the same, he shall, upon conviction, for every such offense pay a fine not exceeding $100." The specific charge was that the defendants knowingly and willfully retarded the passage of one Farris, a carrier of the mail, while engaged in the performance of his duty, and also in like manner retarded the steamboat *General Buell,* at that time engaged in carrying the mail. To this indictment the defendants

Literal construction leads to absurd results.

pleaded specially that Farris had been indicted for murder by a court of competent authority in Kentucky; that a bench warrant had been issued and placed in the hands of the defendant Kirby, the sheriff of the county, commanding him to arrest Farris and bring him before the court to answer to the indictment; and that in obedience to this warrant, he and the other defendants, as his posse, entered upon the steamboat *General Buell* and arrested Farris, and used only such force as was necessary to accomplish that arrest. The question as to the sufficiency of this plea was certified to this court, and it was held that the arrest of Farris upon the warrant from the State Court was not an obstruction of the mail, or the retarding of the passage of a carrier of the mail, within the meaning of the act. In its opinion the court says: "All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the Legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity,' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the statute of 1st Edward II, which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire, 'for he is not to be hanged because he would not stay to be burnt.' And we think a like common sense will sanction the ruling we make, that the act of Congress which punishes

Not within the meaning of the law.

Reason *v.* letter of law.

the obstruction or retarding of the passage of the mail, or of its carrier, does not apply to a case of temporary detention of the mail caused by the arrest of the carrier upon an indictment for murder." The following cases may also be cited: Henry *v.* Tilson (17 Vermont, 479); Ryegate *v.* Wardsboro (30 Vermont, 746); *Ex parte* Ellis (11 California, 220); Ingraham *v.* Speed (30 Mississippi, 410); Jackson *v.* Collins (3 Cowen, 89); People *v.* Insurance Company (15 Johns, 358); Burch *v.* Newbury (10 New York, 374); People *ex rel. v.* Comrs., etc. (95 New York, 554, 558); people *ex rel. v.* Lacombe (99 New York, 43, 49); Canal Co. *v.* Railroad Co. (4 Gill & Johnson, 152); Osgood *v.* Breed (12 Massachusetts, 525, 530); Wilbur *v.* Crane (13 Pick., 284); Oates *v.* National Bank (100 United States, 239).

Title of act an aid in determining meaning.

Among other things which may be considered in determining the intent of the Legislature is the title of the act. We do not mean that it may be used to add or to take from the body of the statute (Hadden *v.* The Collector, 5 Wall., 107); but it may help to interpret its meaning. In the case of United States *v.* Fisher (2 Cranch, 358, 386), Chief Justice Marshall said: "On the influence which the title ought to have in construing the enactment clauses much has been said; and yet it is not easy to discern the point of difference between the opposing counsel in this respect. Neither party contends that the title of an act can control plain words in the body of the statute; and neither denies that, taken with other parts, it may assist in removing ambiguities. *Where the intent is plain, nothing is left to construction. Where the mind labors to discover the design of the Legislature, it seizes everything from which aid can be derived;* and in such case the title claims a degree of notice, and will have its due share of consideration;" and in the case of the United States *v.* Palmer (3 Wheaton, 610, 631),

Rule for construction.

the same judge applied the doctrine in this way: "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the state, but also to those objects to which the Legislature intended to apply them. Did the Legislature intend to apply these words to the subjects of a foreign power, who in a foreign ship may commit murder or robbery on the high seas? The title of an act cannot control its words, but may furnish some aid in showing what was in the mind of the Legislature. The title of this act is, 'An Act for the punishment of certain crimes against the United States.' It would seem that offenses against the United States, not offenses against the human race, were the crimes which the Legislature intended by this law to punish."

Title indicates meaning.

It will be seen that words as general as those used in the first section of this act were by that decision limited, and the intent of Congress with respect to the act was gathered partially, at least, from its title. Now, the title of this act is, "An act to prohibit the importation and migration of foreigners and aliens under contract or agreement to perform labor in the United States, its Territories, and the District of Columbia." Obviously the thought expressed in this reaches only to the work of the manual laborer, as distinguished from that of the professional man. No one reading such a title would suppose that Congress had in its mind any purpose of staying the coming into this country of ministers of the gospel, or, indeed, of any class whose toil is that of the brain. The common understanding of the terms labor and laborers does not include preaching and preachers; and it is to be assumed that words and phrases are used in their ordinary meaning. So whatever of light is thrown

Obvious intent of law of 1887.

upon the statute by the language of the title, indicates an exclusion from its penal provisions of all contracts for the employment of ministers, rectors, and pastors.

Another guide — the evil sought to be remedied.

Again, another guide to the meaning of a statute is found in the evil which it is designed to remedy; and for this the court properly looks at contemporaneous events, the situation as it existed, and as it was pressed upon the attention of the Legislative body. (United States *v.* Railroad Company, 91 U. S., 72, 79.) The situation which called for this statute was briefly but fully stated by Mr. Justice Brown, when, as district judge, he decided the case of United States *v.* Craig (28 Fed. Rep., 795, 798): "The motives and history of the act are matters of common knowledge. It has become the practice for large capitalists in this country to contract with their agents abroad for the shipment of great numbers of an ignorant and servile class of foreign laborers, under contracts, by which the employer agreed, upon the one hand, to prepay their passage, while, upon the other hand, the laborers agreed to work after their arrival for a certain time at a low rate of wages. The effect of this was to break down the labor market, and to reduce other laborers engaged in like occupations to the level of the assisted immigrant. The evil finally became so flagrant that an appeal was made to Congress for relief by the passage of the act in question, the design of which was to raise the standard of foreign immigrants, and to discountenance the migration of those who had not sufficient means in their own hands, or those of their friends, to pay their passage."

Object of law.

Petitions and testimony in Congress show kind of labor meant.

It appears, also, from the petitions, and in the testimony presented before the committees of Congress, that it was this cheap, unskilled labor which was making the trouble, and the influx of which Congress sought to prevent. It was never suggested that we had in this country a surplus of brain toilers, and,

least of all, that the market for the services of Christian ministers was depressed by foreign competition. Those were matters to which the attention of Congress, or of the people, was not directed. So far, then, as the evil which was sought to be remedied interprets the statute, it also guides to an exclusion of this contract from the penalties of the act.

Report of Senate Committee throws light on intent of lawmakers.

A singular circumstance, throwing light upon the intent of Congress, is found in this extract from the report of the Senate Committee on Education and Labor, recommending the passage of the bill: "The general facts and considerations which induce the committee to recommend the passage of this bill are set forth in the report of the Committee of the House. The committee report the bill back without amendment, although there are certain features thereof which might well be changed or modified, in the hope that the bill may not fail of passage during the present session. Especially would the committee have otherwise recommended amendments, substituting for the expression 'labor and service,' whenever it occurs in the body of the bill, the words 'manual labor' or 'manual service,' as sufficiently broad to accomplish the purposes of the bill, and that such amendments would remove objections which a sharp and perhaps unfriendly criticism may urge to the proposed legislation. The committee, however, believing that the bill in its present form will be construed as including only those whose labor or service is manual in character, and being very desirous that the bill become a law before the adjournment, have reported the bill without change." (6059 Congressional Record, 48th Congress.) And referring back to the report of the Committee of the House, there appears this language: "It seeks to restrain and prohibit the immigration or importation of laborers who would have never seen our shores but for the inducements and al-

"Manual labor" or "manual service."

Why the ambiguity allowed to remain.

Report of House Committee shows kind of labor meant.

lurements of men whose only object is to obtain labor at the lowest possible rate, regardless of the social and material well-being of our own citizens, and regardless of the evil consequences which result to American laborers from such immigration. This class of immigrants care nothing about our institutions, and in many instances never even heard of them. They are men whose passage is paid by the importers; they come here under contract to labor for a certain number of years. They are ignorant of our social condition, and, that they may remain so, they are isolated and prevented from coming in contact with Americans. They are generally from the lowest social stratum, and live upon the coarsest food and in hovels of a character before unknown to American workmen. They, as a rule, do not become citizens, and are certainly not a desirable acquisition to the body politic. The inevitable tendency of their presence among us is to degrade American labor, and to reduce it to the level of the imported pauper labor." (Page 5359 Congressional Record, 48th Congress.)

An undesirable class.

We find, therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress, the reports of the committee of each house, all concur in affirming that the intent of Congress was simply to stay the influx of this cheap, unskilled labor.[1]

[1] Having shown that the law in question, as indicated by the intent of the lawmakers and all the circumstances attending the legislation, applied only to manual labor, and not to professional or brain labor, the court might well have closed the argument here and rendered the decision. There was really no need for all the lengthy argument which follows, concerning this being a "religious people" and a "Christian nation," in order to reach the conclusion finally arrived at. The case was proved, and the argument was complete, without this. This, therefore, was extra judicial; and, considering its character, coming from a coördinate branch of a government in which church and state are separate, it is not a little remarkable. To cite

Case proved without the *obiter dictum.*

Beginning of *obiter dictum.*

But beyond all these matters no purpose of action against religion can be imputed to any legislation, State or national, *because this is a religious people.*[1] *This is historically true. From the discovery of this continent to the present hour there is a single voice making this affirmation.* The commission to Christopher Columbus, prior to his sail westward, is from "Ferdinand and Isabella, by the grace of God, King and Queen of Castile," etc., and recites that "it is hoped that by God's assistance some of the continents and islands in the ocean will be discovered," etc. The first colonial grant, that made to Sir Walter Raleigh, in 1584, was from "Elizabeth, by the grace of God, of England, Fraunce, and Ireland, queene, defender of the faith," etc., and the grant authorizing him to enact statutes for the government of the proposed colony provided that "they be not against the true Christian faith nowe professed in the Church of England." The first charter of Virginia, granted by King James I, in 1606, after reciting the application of certain parties for a charter, commenced the grant in these words: "We, greatly commending and gra-

Commission to Columbus.

Grant to Sir Walter Raleigh.

The Virginia grant.

an array of documents and laws gathered almost wholly from times when, and from nations, colonies, and states in which, church and state were united, to prove that a law passed now by a government in which church and state are separate, could not apply to a certain case, would appear illogical at least.

An illogical line of argument.

[1] Because a people are religious is no reason why they may not make laws against religion. The most intolerant and persecuting laws the world has ever seen have been made by religious people. Nor because a nation is professedly "Christian" is such legislation impossible. All the leading European nations, save Turkey, are "Christian nations" so called; but which one has not made restrictive religious laws, or laws against religion? And even in a government like the United States, where church and state are separate, laws may be made, and properly so, restricting certain practices or customs carried on in the name of religion, when those practices or customs are criminal or uncivil in character, as, for instance, laws against polygamy.

Religious people have often made oppressive religious laws.

ciously accepting of, their Desires for the Furtherance of so noble a Work, which may, by the Providence of Almighty God, hereafter tend to the Glory of his Divine Majesty, in propagating of Christian religion to such People, as yet live in Darkness and miserable Ignorance of the true Knowledge and Worship of God, and may in time bring the Infidels and Savages, living in those parts, to human Civility, and to a settled and quiet Government; DO, by these our Letters-Patents, graciously accept of, and agree to, their humble and well-intended Desires."

Language of similar import may be found in the subsequent charters of that colony, from the same king, in 1609 and 1611; and the same is true of the various charters granted to the other colonies. *In language more or less emphatic is the establishment of the Christian religion declared to be one of the purposes of the grant.*[1] The celebrated compact made by the

Christian religion one purpose of grant.

[1] The character of the evidence cited in this decision to prove that this is a "Christian nation" and a "religious people" is worthy of note. The first citation — the commission from Ferdinand and Isabella to Columbus — is significant. The religion of these rulers was the Catholic religion; and not only so, but the Catholic religion with the Inquisition in full operation, for it was Ferdinand and Isabella who, under the generalship of Torquemada, established the Inquisition in Spain, and who, because Spain was a "Christian nation," sentenced to banishment, and decreed the confiscation of all goods of, every Jew in the nation who would not turn Catholic. This is the first historical evidence cited by the court to prove that this is a "Christian nation."

Character or evidence cited.

It is true that "the establishment of the Christian religion" was declared to be one of the "purposes" of the grants from Elizabeth and succeeding rulers of England to Sir Walter Raleigh and others. But are the American people still bound by the purposes and intentions of those British rulers? Does Great Britain still rule America? After all these historical documents were issued, was there not the Declaration of Independence and the American Revolution? And after these was there not a new nation established, inaugurating "a new order of things;" and a national Constitution framed, declaring for religious freedom, and expressly repudiating religious legislation and religious establishments under the national government? What

The national government established on a new order of things.

Compact of *Mayflower* Pilgrims.

Pilgrims in the *Mayflower,* 1620, recites: "Having undertaken for the Glory of God, and Advancement of the Christian Faith, and the Honour of our King and Country, a Voyage to plant the first Colony in the northern Parts of Virginia; Do by these Presents, solemnly and mutually, in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better Ordering and Preservation, and Furtherance of the Ends aforesaid."

then could these ancient English grants of right have to do with the testing of the constitutionality of a law enacted by the Congress of the United States?

Coming to our own country, it will be noticed that constitutional declarations guaranteeing religious freedom are cited along with provisions and laws defining religious duties, making religious tests, providing for the support of religious teachers, and requiring religious observances, as equally proving this a "Christian nation." Then, referring to all the evidence thus cited, the court says: "There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning." For the purpose of this decision, State Constitutions requiring religious tests mean the same as the United States Constitution when it says, "No religious test shall ever be required as a qualification to any office," etc. Even an English grant, one of whose purposes was "the establishment of the Christian religion," and the constitutional prohibition, "Congress shall make no law respecting an establishment of religion," have "one meaning," says this decision. Between such declarations it says there is no "dissonance." Nor does it fail to mention the laws "respecting the observance of the Sabbath,"— the very laws which, more than any others, have been instrumental in uniting church and state in the past, and been characteristic of such unions, both in America and Europe.

All have one meaning, says court.

Sabbath laws cited.

A REMARKABLE OMISSION.

A remarkable omission.

The national formation period overlooked entirely.

That the writer of this decision should have searched and gathered from European documents, from colonial laws, and from State court decisions from the time of Columbus to recent years,— declarations so utterly at variance with the American doctrine of the separation of church and state — and omitted entirely all reference to those famous state documents, petitions, remonstrances, and memorials bearing on religious liberty produced between the signing of the Declaration of Independence and the adoption of the United States

Connecticut orders cited.

The fundamental orders of Connecticut, under which a provisional government was instituted in 1638-1639, commence with this declaration: "Forasmuch as it hath pleased the Almighty God by the wise disposition of his diuyne pruidence so to Order and dispose of things that we the Inhabitants and Residents of Windsor, Hartford, and Wethersfield are now cohabiting, and dwelling in and vppon the River of Conectecotte and the Lands thereunto ad-

Constitution when the national government was being formed (see Part II of this work); or to those other prominent State and national utterances touching the same subject since then, such as the famous Sunday Mail Reports adopted by Congress in 1829 and 1830, and the Supreme Court Decision of California in 1858, setting aside the State Sunday law as unconstitutional (see pages 434-459, 350-353), is indeed most remarkable. During the first period mentioned the national government was founded. During this time was fought out the great struggle for religious freedom which resulted in divorcing religion from civil government in this country, and in founding a nation without an established or legally declared religion. This decision passes this all by as though it were no part of American history, and as though it had never happened. Such an omission seems indeed remarkable.

Must have been intentional.

The language in which Abraham Lincoln characterized a similar omission in Stephen A. Douglas's defense of the decision of the Supreme Court of the United States in 1856, in the Dred Scott case, written by Chief Justice Taney, in which the doctrine was set forth that a colored man "had no rights which the white man was bound to respect," seems eminently fitting here. He said:

Abraham Lincoln's characterization of Douglas applicable.

"I ask, How extraordinary a thing it is that a man who has occupied a seat on the floor of the Senate [or on the bench of the Supreme Court — ED.] of the United States, . . . pretending to give a truthful and accurate history of the slavery question [or of the question of religion and the nation — ED.] in this country, should so entirely ignore the whole of that portion of our history — the most important of all! Is it not a most extraordinary spectacle that a man should stand up and ask for any confidence in his statements who sets out as he does with portions of history, calling upon the people to believe that it is a true and fair representation, when the leading part, the controlling feature, of the whole history is carefully suppressed?

An extraordinary omission.

Essential history suppressed.

"And now he asks the community to believe that the men of the Revolution were in favor of his 'great principle,' when we have the naked history that they themselves dealt with this very subject

ioyneing; And well knowing where a people are gathered togather the word of God requires that to mayntayne the peace and vnion of such a people there should be an orderly and decent Gouernment established according to God, to order and dispose of the affayres of the people at all seasons as occation shall require; doe therefore assotiate and conioyne our selues to be as one Publike State or Commonwealth; and doe, for our selues and our Successors and such as shall be adioyned to vs att any tyme hereafter, enter into Combination and Confereration togather to mayntayne and presearue the liberty and purity of the gospell of our Lord Jesus wch we now prfesse, *as also the discipline of the Churches, wch* according to the truth of the said gospell *is now practiced amongst vs.*"

To maintain purity of gospel and discipline of churches.

In the charter of privileges granted by William Penn to the province of Pennsylvania, in 1701, it is recited: "Because no People can be truly happy, though under the greatest Enjoyment of Civil Liberties, if abridged of the Freedom of their Consciences, as to their Religious Profession and Worship; And Almighty God being the only Lord of Conscience, Father of Lights and Spirits; and the Author as well as Object of all divine Knowledge, Faith and Worship, who only doth enlighten the Minds, and persuade and

Charter to William Penn quoted.

matter of his principle, and utterly repudiated his principle — acting upon a precisely contrary ground. It is as impudent and absurd as if a prosecuting attorney should stand up before a jury, and ask them to convict A as the murderer of B, while B was standing alive before them."

Men of Revolution held opposite view.

Though a decision of the Supreme Court of the United States, Lincoln said that that decision was wrong in principle, and that it should be reversed. So it may be said now of the "Christian nation's" decision of 1892. It is wrong in principle, and should be reversed. It certainly does not voice the religious liberty principles of the founders of the national government. In principle and as precedent it is pernicious and mischievous. This has been clearly demonstrated by the use that has already been made of it.

Decision wrong in principle.

Pernicious and mischievous.

convince the Understandings of People, I do hereby grant and declare," etc.

Declaration of Independence.

Coming nearer to the present time, the Declaration of Independence recognizes the presence of the divine in human affairs in these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty, and the pursuit of happiness." "We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by authority of the good people of these Colonies, solemnly publish and declare," etc.; "And for the support of this Declaration, with a firm reliance on the Protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor."

State Constitutions.

If we examine the Constitutions of the various States, we find in them a constant recognition of religious obligations. Every Constitution of every one of the forty-four States contains language which either directly or by clear implication recognizes a profound reverence for religion and an assumption that its influence in all human affairs is essential to the well-being of the community. This recognition may be in the preamble, such as is found in the Constitution of Illinois, 1870: "We, the people of the State of Illinois, grateful to Almighty God for the civil, political, and religious liberty which he hath so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations," etc.

Oath of office.

It may be only in the familiar requisition that all officers shall take an oath closing with the declaration "*so help me God.*" It may be in clauses like that of the Constitution of Indiana, 1816, article 2, section 4:

"The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed the most solemn appeal to God." Or in provisions such as are found in articles 36 and 37 of the Declaration of Rights of the Constitution of Maryland, 1867: "That, as it is the duty of every man to worship God in such manner as he thinks most acceptable to him, all persons are equally entitled to protection in their religious liberty: wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, *unless, under the color of religion,* he shall disturb the good *order, peace, or safety of the State,* or shall infringe *the laws of morality,* or injure others in their natural, *civil, or religious rights;* nor ought any person to be compelled to frequent or maintain or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness or juror on account of his religious belief, *provided he believes in the existence of God,* and that, *under his dispensation,* such person will be held morally accountable for his acts, and be rewarded or punished therefor, either in this world or the world to come; that no religious test ought ever to be required as a qualification for any office of profit or trust in this State, *other than a declaration of belief in the existence of God;* nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution." Or like that in articles 2 and 3 of Part I of the Constitution of *Massachusetts,* 1780: "It is the right as well as *the duty* of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. . . . *As the happiness of a people and the good order and preservation of civil government* essentially depend upon *piety,*

Duty of every man to worship God.

Witness must believe in God.

Religious qualification for office.

Duty to worship.

Government dependent on religion.

religion, and *morality,* and as these cannot be generally diffused through a community *but by the institution of the public worship of God* and *of public instructions in piety, religion,* and *morality,* therefore, to promote their happiness and to secure the good order and preservation of their government, the people of this commonwealth have a right to *invest their Legislature with power to authorize and require, and the Legislature shall,* from time to time, *authorize and require* the several *towns, parishes, precincts,* and other *bodies politic* or religious societies to *make suitable provisions,* at their own expense, *for the institution of the public worship of God* and *for the support and maintenance of public Protestant* teachers of piety, religion, and morality in all cases where such provision shall not be made voluntarily." Or as in sections 5 and 14 of article 7 of the Constitution of Mississippi, 1832: "*No person who denies the being of a God,* or a future state of rewards and punishments, *shall hold any office in the civil department of this state.* . . . Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools, and the means of education, shall forever be encouraged in this State." Or by article 22 of the Constitution of Delaware, 1776, which required all officers, besides an oath of allegiance, to make and subscribe the following declaration: "I, A. B., do profess faith in God the Father, and in Jesus Christ his only Son, and in the Holy Ghost, one God, blessed forevermore; and I do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration."

Legislature invested with power to provide for public worship.

Religious test a qualification for office.

Religion essential to good government.

Profession of faith in Trinity and Scriptures required.

Even the Constitution of the United States, which is supposed to have little touch upon the private life of the individual, contains in the first amendment a declaration common to the Constitutions of all the States, as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exer-

Constitution of the United States.

cise thereof," etc. And also provides in article 1, section 7 (a provision common to many Constitutions), that the Executive shall have ten days (Sundays excepted) within which to determine whether he will approve or veto a bill.

No dissonance — one language — one meaning — a religious nation.

There is no dissonance in these declarations. There is a universal language pervading them all, having one meaning; they affirm and reaffirm that this is a religious nation. These are not individual sayings, declarations of private persons; they are organic utterances; *they speak the voice of the entire people.* While, because of a general recognition of this truth, the question has seldom been presented to the courts, yet we find that in Updegraph *v.* The Commonwealth (11 Serg. & Rawle, 394, 400), it was decided that "*Christianity,* general Christianity, *is and always has been, a part of the common law of Pennsylvania;* . . . not Christianity with an established church, and tithes, and spiritual courts, but Christianity with liberty of conscience to all men." And in The People *v.* Ruggles (8 Johns., 290, 294, 295), *Chancellor Kent,* the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York, said: "The people of this State, in common with the people of this country, profess the general doctrines of Christianity as the rule of their faith and practice, and to scandalize the Author of these doctrines is not only, in a religious point of view, extremely impious, but, even, in respect to the obligations due to society, is a gross violation of decency and good order. . . . The free, equal, and undisturbed enjoyment of religious opinion, whatever it may be, and free and decent discussions on any religious subject, is granted and secured; *but to revile, with malicious and blasphemous contempt, the religion professed by almost the whole community, is an abuse of that right.* Nor are we bound, by any expressions in the Constitution, as some have strangely supposed, either not to

Christianity part of common law.

To revile religion of majority unlawful.

punish at all, or to punish indiscriminately, the like attacks upon the religion of *Mahomet* or of the Grand *Lama;* and for *this plain reason,* that the case assumes that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of those impostors." And in the famous case of Vidal *v.* Girard's Executors (2 How., 127, 198), this court, while sustaining the will of Mr. Girard, with its provision for the creation of a college into which no minister should be permitted to enter, observed: "It is also said, and truly, that the *Christian religion* is a *part* of the common law of *Pennsylvania.*" [1]

Other religions not thus protected.

Girard will sustained, but Christianity declared part of common law.

If we pass beyond these matters to a view of American life as expressed by its laws, its business, its customs, and its society, we find everywhere a clear recognition of the same truth. Among other matters note the following: The form of oath universally prevailing, concluding with an appeal to the Almighty; the custom of opening sessions of all deliberative bodies and most conventions with prayer; the prefatory words of all wills, "In the name of God, amen;" *the laws respecting the observance of the Sabbath;* with the general cessa-

Form of oath.

Opening sessions with prayer.

Sabbath laws.

[1] In the case of *ex parte* Newman, 9 California, 502, Justice Burnett, of the Supreme Court of California, said: "We often meet with the expression that Christianity is a part of the common law. Conceding that this is true, it is not perceived how it can influence the decision of a constitutional question. The Constitution of this State will not tolerate any discrimination or preference in favor of any religion; and, so far as the common law conflicts with this provision, it must yield to the Constitution. Our constitutional theory regards all religions, as such, equally entitled to protection, and all equally unentitled to any preference. Before the Constitution they are all equal." See *ante* page 450. While Christianity may be the religion of many or even of a majority of the people of the country, this, under the American system of government, gives no authority or warrant to any court, State or national, to say that Christianity is the religion of the nation or a part of the law of the land. See Jefferson and the Supreme Court of Ohio on the subject, *ante* pages 208 and 460.

Our constitutional theory regards all religions equal before the law.

No authority given courts to pronounce on religion.

tion of all secular business, and the closing of courts, legislatures, and other similar public assemblies on that day; the churches and church organizations which abound in every city, town, and hamlet; the multitude of charitable organizations existing everywhere under Christian auspices; the gigantic missionary associations, with general support, and aiming to establish Christian missions in every quarter of the globe. These, and many other matters which might be noticed, *add a volume of unofficial declarations* to the mass of organic utterances *that this is a Christian nation.*[1] In the face of all these, shall it be believed that a Congress of the United States intended to make it a misdemeanor for

Charitable organizations.

Missionary operations.

Conclusion of *obiter dictum* argument — this a Christian nation.

[1] How this declaration on the part of the Supreme Court of the United States was received, and the light in which it has been regarded ever since by the National Reformers and other advocates of a union of church and state in this country, may be gathered from the following:

How National Reformers received the decision.

In the "Christian Statesman" of June 25, 1892, the official organ of the National Reform Association, one of the secretaries of the association said:

"Is not this the time to remember that the United States Supreme Court has officially declared (in a document that reads as if largely gathered from the National Reform Manual) that this is a Christian nation?"

Reads like National Reform Manual.

The "Pearl of Days," the official organ of the American Sabbath Union, of May 7, 1892, said that this decision "establishes clearly the fact that our government is Christian," and added:

"*This decision is vital to the Sunday question in all its aspects,* and places that question among the most important issues now before the American people. . . . And this important decision rests upon the fundamental principle that religion is imbedded in the organic structure of the American government — a religion that recognizes, *and is bound to maintain, Sunday* as a day for rest and worship."

Vital to Sunday question.

In its issue of May 21, 1892, the "Christian Statesman" said:

"'Christianity is the law of the land.' 'This is a Christian nation.' U. S. Supreme Court, February 29, 1892. The Christian church, therefore, has rights in this country. Among those is the right to one day in seven protected from the assaults of greed, the god of the world, that it may be devoted to worship of the God of heaven and earth."

Christian church's right to a protected day.

a church of this country to contract for the services of a Christian minister residing in another nation?

Suppose in the Congress that passed this act some member had offered a bill which in terms declared that, if any Roman Catholic Church in this country should contract with Cardinal Manning to come to this country and enter into its service as pastor and priest; or any Episcopal Church should enter into a like contract with Canon Farrar; or any Baptist Church should make similar arrangements with Rev.

Lower court ruling disproved by hypothetical argument.

And just before Thanksgiving of that year, the same paper, under date of November 19, 1892, printed the following article:

"CHRISTIAN POLITICS.

"The Supreme Court Decision.

"The Greatest Occasion for Thanksgiving.

"'This is a Christian nation.' That means Christian government, Christian laws, Christian institutions, Christian practices, Christian citizenship. And this is not an outburst of popular passion or prejudice. Christ did not lay his guiding hand there, but upon the calm, dispassionate, supreme judicial tribunal of our government. It is the weightiest, the noblest, the most tremendously far-reaching in its consequences of all the utterances of that sovereign tribunal. And that utterance is for Christianity, for Christ. 'A Christian nation!' Then this nation is Christ's nation, for nothing can be Christian that does not belong to him. Then his word is its sovereign law. Then the nation is Christ's servant. Then it ought to, and must, confess, love, and obey Christ. All that the National Reform Association seeks, all that this department of Christian politics works for, is to be found in the development of that royal truth, 'This is a Christian nation.' It is the hand of the second of our three great departments of national government throwing open a door of our national house, one that leads straight to the throne of Christ.

Most far-reaching in its consequences.

All National Reform Association seeks — development of court declaration.

"Was there ever a Thanksgiving day before that called us to bless our God for such marvelous advances of our government and citizenship toward Christ?

"'O sing unto the Lord a new song; for he hath done marvelous things: his right hand, and his holy arm, hath gotten him the victory. . . . Sing unto the Lord with the harp; with the harp, and the voice of a psalm.'"

This shows that these National Reformers and "Christian politicians" recognized in this decision a national judicial sanction for all they had ever asked in the way of religious legislation, and

Rule applies to Jewish rabbi as well as to Christian minister.

Mr. Spurgeon; or any Jewish synagogue with some eminent rabbi, such contract should be adjudged unlawful and void, and the church making it be subject to prosecution and punishment, can it be believed that it would have received a minute of approving thought or a single vote? Yet it is contended that such was in effect the meaning of this statute. The construction invoked cannot be accepted as correct. It is a case where there was presented a definite evil, in view of which the Legislature used general terms with the purpose of reaching all phases of that evil, and thereafter, unexpectedly, it is developed that the general language thus employed is broad enough to reach cases and acts which the whole history and life of the country affirm could not have been intentionally legislated against. It is the duty of the courts, under those circumstances, to say that, however broad the language of the statute may be, the act, although within the letter, is not within the intention of the Legislature, and, therefore, cannot be within the statute.

Language of law too broad.

Within letter, but not within intent of Legislature.

The judgment will be reversed, and the case remanded for further proceedings in accordance with this opinion.

particularly in the way of Sunday legislation. And the fact that within only a few months after the rendering of this decision Congress passed its first Sunday legislation (see pages 370-377), and that since then over fifty Sunday-law bills and something like half a dozen religious constitutional amendment bills have been introduced in Congress, is some evidence of its far-reaching effects and of how it helped to set the tide in this government in the wrong direction — in the way of religious legislation.

First Sunday law by Congress soon followed.

And that Justice Brewer, who wrote the opinion, considered Sunday legislation as vitally connected with his conception of a "Christian nation," is evident from the fact that in his little work of ninety-eight pages, entitled "The United States a Christian Nation," published in 1905, after starting out with a citation to this decision of the Supreme Court, he refers to Sunday and Sunday laws no less than thirty-three times, and justifies the enforcement of Sunday ob-

Justice Brewer considered Sunday legislation vitally connected with Christian nation.

servance by law upon the ground that "respect for Christianity implies respectful treatment of its institutions and ordinances;" that "the citizen who does not attend [church],— does not even share in the belief of those who do,— ought ever to bear in mind the noble part Christianity has taken in the history of the republic;" and that "the American Christian is entitled to his quiet hour." Pages 54, 55. As well might the Jew, whose ancestors fought in the war of the Revolution, and through whom came to us the Bible and even the Christ, demand, upon the same ground, respect for Jewish institutions and ordinances, laws enforcing the universal observance of Saturday, and thus the American Jew's right to his "quiet hour."

In this same book Justice Brewer traces the origin of American Sunday laws in general to the Sunday law of Charles II, thus:

Origin of American Sunday laws.

"By the English statute of 29 Charles II no tradesman, artificer, workman, laborer, or other person was permitted to do or exercise any worldly labor, business, or work of ordinary calling upon the Lord's day, or any part thereof, works of necessity or charity only excepted. That statute, with some variations, has been adopted by most if not all the States of the Union." Pages 28, 29.

Every one who has ever read the law of Charles II knows that it is religious. And Justice Brewer was candid enough to admit the religious character of the American Sunday laws, based, as they are, upon this English law of Charles II, in the following words:

Though often styled police regulations, these laws religious.

"Indeed, the vast volume of official action, legislative and judicial, recognizes Sunday as a day separate and apart from the others, a day devoted not to the ordinary pursuits of life. It is true in many of the decisions this separation of the day is said to be authorized by the police power of the State and exercised for purposes of health. At the same time, through a large majority of them there runs the thought of its being a religious day, consecrated by the commandment, 'Six days shalt thou labor, and do all thy work: but the seventh day is the Sabbath of the Lord thy God: in it thou shalt not do any work, thou, nor thy son, nor thy daughter, thy man servant, nor thy maid servant, nor thy cattle, nor the stranger that is within thy gates.'" *Id.*, pages 29, 30.

Therefore unconstitutional.

But if Sunday laws are religious, as here admitted, they are unconstitutional, and a correct, unbiased, and impartial application of American principles would so adjudge them in every State in the nation as well as under the national Constitution itself.

A departure from American principles.

The whole trend, therefore, of the latter part of this decision, justifying and upholding religious laws and Sunday legislation, was away from American principles and from both the spirit and the letter of the Constitution of the United States, by which the Supreme Court is created, and the principles of which that Court is supposed to correctly interpret, uphold, and defend. No power is conferred by the Constitution upon any branch of the national government to

make any pronouncement as to the religious character of the nation. As Madison said: "There is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation." Declaring, as it did, the national "creed," it did more than merely to "intermeddle" with religion. So far as could be done by a court decision, it united church and state in the United States, and created a religious establishment.

Established a national creed.

The reference in next to the last paragraph of the decision to a Jewish synagogue in this country contracting with some eminent foreign rabbi, and the repudiation of the idea that such contract would be void under the law in question, shows that it was not because this is a *Christian* nation any more than because it is a *Jewish* nation that no such ruling should hold; but because of the fact that *labor of this kind was not the kind of labor the law referred to.* It is evident, therefore, that all this extended argument and array of proofs to show that this is a *Christian* nation was not only unnecessary, but irrelevant,—a gratuitous sandwiching in of a lot of National Reform, church and state argument because of the character of the case seemed to afford a convenient opportunity to do so,—a revoicing in a national judicial decision, of the Un-American position taken by Justice Field in his dissenting opinion in the *ex parte* Newman case in California, in 1858. See page 434.

The whole *obiter dictum* argument proved false.

A gratuitous endorsement National Reform church-and-stateism.

It may be a matter of interest just here to state that Justice Field was not only an uncle of Justice Brewer, but that both were members of the Supreme Court of the United States when this case came before that body.

While this decision was hailed with delight by National Reformers and the advocates of a union of church and state in this country, it is not all they wish. Thus, Dr. David McAllister, in the preface to his "Manual of Christian Civil Government," p. 9, third ed., says:

Not all National Reformers wish.

"While our Supreme Court in the above-quoted decision has said incidentally that 'this is a Christian nation,' and while multitudes of our people also say so, the nation itself has not said so. It speaks directly in its fundamental law, the written Constitution of the United States, in which it proclaims its own character. And in that authoritative instrument there is no acknowledgment of Christ. In that confession of its political and moral character it does not say that it is Christian."

Only a complete overturning of the great principle of religious liberty upon which the national government was founded will satisfy these American advocates of a national established religion. And when they succeed in accomplishing this, they may learn, when it is too late, that they have sold their birthright, and that there are others claiming priority of rights here, both as regards country and religion. But this decision meant a long step in the backward, downward course.

Complete overthrow of American principle.

In an address on " The Church and the Government," delivered in the Foundry Methodist Episcopal Church, Washington, D. C., March 13, 1910, Bishop Earl Cranston, D. D., said:

Bishop Cranston on Christian nation.

" Suppose this were to be declared a Christian nation by a constitutional interpretation to that effect. What would that mean? Which of the two contending definitions of Christianity would the word Christian indicate? — The Protestant idea, of course, for under our system majorities rule, and the majority of Americans are Protestants. Very well. But suppose that by the addition of certain contiguous territory with twelve or more millions of Roman Catholics, the annexation of a few more islands with half as many more, and the same rate of immigration as now, the majority some years hence should be Roman Catholics,— who doubts for a moment that the reigning Pope would assume control of legislation and government? He would say with all confidence and consistency, ' This is a Christian nation. It was so claimed from the beginning and so declared many years ago. A majority defined then what Christianity was, the majority will define now what Christianity now is and is to be.' That ' majority ' would be the Pope." " The Church and the Government," by Bishop Earl Cranston, pages 6, 7.

But this is just what the Supreme Court did in this decision. In so many words it declared this " a Christian nation," and, after citing first, Catholic, and then English church and state authority, cited the Constitution itself in support of the declaration.

And that the Papacy has its eye on this country, and is bending its energies to swing this nation back into the fold of the Catholic Church, is well known to all intelligent and observing men. And that the Papacy still holds to the doctrine of a union of church and state is also well known. In his letter to the bishops of France, dated February 11, 1906, Pope Pius X, opposing the position of the French government upon this question, said:

Pope Pius endorses union of church and state.

" That it is necessary to separate church and state is a thesis absolutely false,— a most pernicious error. Based in fact upon the principle that the state ought not to recognize any religious faith, it is, to begin with, deeply insulting to God; for the Creator of man is also the founder of human societies, and he maintains them as he does us. We owe him, therefore, not only private worship, but also a public and social worship in his praise." " Readings in Modern European History," by Professors James Harvey Robinson and Charles A. Beard, of Columbia University, N. Y., page 229.

What reasoning! that public and social worship must be done through the *state,* or requires a *union* of church and state!

Regrettable as is the fact, and unintentional as it may have been, into the hands of an ecclesiastical power holding such views regarding church and state and religious liberty, was the Supreme Court playing when it declared this a " Christian nation."

Jan. 21, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

MARYLAND SUNDAY LAW OF 1723 NOT IN FORCE IN THE DISTRICT.[1]

[DECIDED JANUARY 21, 1908.]

Mr. Justice Van Orsdel delivered the opinion of the Court.

This cause was brought here on writ of error to the Police Court of the District of Columbia. An information was filed therein, charging the defendant with the offense of working on Sunday. The statute, under which the prosecution was sought to be maintained, was an act of the Maryland legislative assembly of 1723, chapter 16, section 10, appearing in Abert's Compiled Statutes D. C., page 176. It is as follows:

The Maryland Sunday law of 1723.

"That no person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and that no person having children, servants, or slaves shall command or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children, servants, or slaves to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastimes or recreations, and that every person transgressing this act, and being thereof convict by the oath of one sufficient witness, or confession of the party before the Police Court (a single magistrate) shall forfeit two hundred pounds of tobacco, to be levied and applied as aforesaid."[2]

[1] "Washington Law Reporter," February 14, 1908.

[2] This law had been incorporated into the laws of the District, along with other Maryland laws, by act of Congress in 1801, when the

The complaint was in the usual form, signed and sworn to by the corporation counsel. The defendant demurred to the complaint on several grounds, one of which was "that the said act of the Maryland Legislature has never been enforced in this District, and by disuse has become obsolete." The police justice sustained the demurrer and dismissed the defendant. From that judgment the case was brought here on a writ of error by the corporation counsel. We think a consideration of the one ground of demurrer above cited will fully dispose of the questions involved in this case.[1]

Never enforced in District.

. . . . . .

District was taken over by Congress, and remained on the District statute books in codes compiled as late as 1868. But it had never been enforced. A test case, however, was started under it in 1907. In July of that year, General John M. Wilson protested to the District Commissioners against the hauling of dirt along Massachusetts Avenue on Sunday, July 21, by a Mr. Charles Robinson, a driver for J. H. Houser, the District contractor. The complaint was referred to Corporation Counsel Thomas for an opinion as to whether prosecution could be brought, resulting in the exhuming of this old Maryland blue law, and a trial under it in the Police Court before Judge Mullowny, October 29, 1907. Judge Mullowny at once decided that the law was obsolete and inoperative. The case was appealed to the District Court of Appeals, the highest court of the District, where it came up for hearing January 10, 1908. The decision, confirming the opinion of the lower court, was rendered January 21, 1908. In his brief before the latter court, Edward S. Duvall, Jr., attorney for the defendant, said: "The Act is unconstitutional because it is plainly a law prohibited by the first amendment to the Constitution."

Test case under law.

1 The court here anticipates the ground upon which it set the law aside — that of its becoming obsolete through disuse. Upon this ground a large proportion of the Sunday laws of the country could be set aside. A little further on the court alludes to a far better ground upon which it might have based its decision, where it says that if the act was intended to enforce the observance of the Sabbath "as a religious obligation," which still further on it admits to be the case, "we are of the opinion that it cannot be legally enforced under our present constitutional form of government;" in other words, that it is unconstitutional. But, apparently fearing to upset

Unconstitutional yet constitutional.

Legislature cannot impose religious duties.

While it is the legitimate prerogative of the Legislature to impose upon society the civil duty of observing one day in seven as a day of rest, it is beyond its power to impose the observance of Sunday as a purely religious duty. In other words, while the Legislature may very properly prescribe and impose upon the citizen obligations of a civil nature, it cannot impose the obligations as religious duties. If, therefore, the act in question was intended to enforce the observance of the Sabbath as a religious obligation, and not a civil duty, whatever power the colonial legislative assembly may have had to prescribe and enforce such a law, we are of the opinion that it cannot be legally enforced under our present constitutional form of government. The Constitution of the United States guarantees to the citizen absolute religious freedom in that it forbids the enactment of any law respecting an establishment of religion, or that will prohibit the free exercise thereof.

Law unconstitutional.

With this distinction before us, let us analyze the manifest object and purpose of the statute before us. The act of which this section was a part was entitled "An Act to punish blasphemers, swearers, drunkards, and Sabbath-breakers, and for repealing the laws heretofore made for punishing such offenders." The first section provided "that if any person shall hereafter, within this province, wittingly, maliciously, and advisedly, by writing or speaking, blas-

Object of law shown to be religious.

Sunday legislation altogether, the court here goes on at some length to argue upon the rightful authority of the state, in the exercise of its "police power," to make laws "prohibiting labor on the Sabbath," as "a rule of civil duty," and "for the health, the morals, and the general welfare of its people;" and, on the ground that "our nation and the States composing it are Christian in policy," to select Sunday, the first day of the week, as such, citing, in support, Justice Field's dissenting opinion in *ex parte* Newman, 9 California, 502, and Judge Thurman, in 2 Ohio St., 387, and closing this line of argument with the statement that "the constitutionality of this class of legislation can no longer be questioned." On "police power," see page 520.

pheme or curse God, or deny our Saviour Jesus Christ to be the Son of God, or shall deny the Holy Trinity; the Father, Son, and Holy Ghost, or the Godhead of any of the Three Persons, or the unity of the Godhead, or shall utter any profane words concerning the Holy Trinity or any of the Persons thereof, and shall be thereof convict by verdict, or confession, shall, for the first offence, be bored through the tongue and fined twenty pounds sterling: . . . for the second offence . . . shall be stigmatized by burning in the forehead with the letter B, and fined forty pounds sterling; . . . and that for the third offence, the offender, being convicted as aforesaid, shall suffer death without the benefit of the clergy." The second section related to profane swearing in the presence of certain officers, named, among which were ministers, vestrymen, and church wardens. The third section prohibited drunkenness. The other sections, aside from the one here under consideration, related to the manner in which trials should be conducted, and the manner of enforcing the collection of fines and the infliction of punishment. The act then provided for the repeal of certain acts providing for "Sanctifying and Keeping Holy the Lord's Day, commonly called Sunday, and for the Punishment for Blasphemy, Profane Swearing, Cursing, and Drunkenness."

Forced to conclusion by setting of law.

Taking the entire act into consideration, we are forced to the conclusion that the object of this statute undoubtedly was to prevent a desecration of the Lord's day, as it was called in the act, and not primarily to enforce a day of rest, which is the present policy of such laws as defined by the courts. The statute before us is part of a peculiar class of legislation that was enacted in many of the colonies during the seventeenth and the early part of the eighteenth centuries. The object of such legislation was not to

bring about the purpose sought to be accomplished by the legislation of the present day, providing for a cessation from labor on one day in seven, but to enforce a strict religious observance of the Sabbath day. Such laws were the outgrowth of the system of religious intolerance that prevailed in many of the colonies. They prescribed religious and not civil duties. With the adoption of the Constitution and the establishment of constitutional governments in the States of the Union these laws dropped into disuse, and any attempt to enforce them was frowned upon by the courts.[1]

Outgrowth of colonial religious intolerance.

[1] Taking the entire history of Sunday legislation into consideration, every honest man is forced to the conclusion that every Sunday law that has ever been made is religious, the Maryland law of 1723 no more so than any other. The primary object of every one of them from first to last is "to prevent the desecration of" Sunday, and not simply to enforce a day of physical rest, which means simply to enforce a day of idleness. After admitting that the Maryland Sunday law, along with the other laws of this kind, was "the outgrowth of the system of religious intolerance that prevailed in many of the colonies," and that these laws "prescribed religious and not civil duties," is it not a little strange that the court, in the face of the first amendment to the Constitution, to which it alluded, should fail to set this law aside upon the ground of its unconstitutionality?

Object of all Sunday laws.

That the old Maryland-District Sunday law of nearly two centuries ago is no more religious than more modern Sunday legislation and attempted Sunday legislation, compare it with the Johnston District Sunday bill which passed the Senate May 15, 1908, and again, with slight modifications, January 27, 1910. See page 398. One prohibits "bodily labor on the Lord's day, commonly called Sunday;" the other "labor at any trade or secular calling" "on the first day of the week, commonly called Sunday." One prohibits "unlawful pastimes or recreations;" the other "any circus, show, or theatrical performance." One prohibits any one to suffer his "children, servants, or slaves . . . to do any manner of work or labor on the Lord's day, works of necessity and charity always excepted;" the other forbids any one to "cause to be employed his apprentice or servant in any labor or business, except in household work or other work of necessity or charity." One forbids any one to permit any one under him to "profane the Lord's day;" the other, as first introduced, exempts any one from keeping Sunday provided he is a member "of a *religious society* who observe *as* a *Sabbath* any other day

Johnston Sunday bill and Maryland law of 1723 compared.

It was admitted at bar that no former attempt had ever been made to enforce the statute in question, though it has been on the statute books of the District of Columbia for more than one hundred years. . . . It is proper to regard the statute before us not only as obsolete, but as repealed by implication in such essential parts as an advanced and enlightened civilization justifies with due regard for the personal liberties of the citizen. . . . The judgment of the Police Court is affirmed.

Statute obsolete.

in the week than Sunday," and "observe *as a Sabbath* one day in each seven *as herein provided.*" One provides a fine of "two hundred pounds of tobacco," or in default (as per preceding sections of the same act) "three hours in the stocks" or "thirty-nine lashes" (see note on page 46); the other a fine of ten dollars or ten days' imprisonment, or both (thirty dollars and thirty days as last passed). Neither requires church attendance. Both are religious. Both "prescribe religious and not civil duties." One is intended "to enforce a strict religious observance of the Sabbath day" as much as the other. The two are practically the same. To say that the object of one is religious and the other civil is to blind one's eyes and to stultify reason. One is as religious as the other, and as much "the outgrowth of the system of religious intolerance that prevailed in many of the colonies" as the other. Every Sunday law in the United States to-day is simply a relic of the old colonial religious establishments, and these of the religious establishments of the Old World. To pronounce one religious is to condemn all. They are all of one piece, and all should be repealed, and not left for the courts to declare valid and in force, or obsolete and not enforceable, as they choose.

The setting in which the old Maryland Sunday law was found compelled the court to recognize its religious character and object. Every other Sunday law, either ancient or modern, *without such setting,* is just as religious. None of them has ever been or ever will be enforced for the "health" of the individual. By prohibiting labor and amusements on Sunday the state simply enforces a day of idleness: idleness is a breeder of dissipation and crime, and these are conducive to the health, happiness, morality, and welfare of no one. See "What Is the Equivalent?" on page 740. The command of the divine Sabbath law is, "Remember the Sabbath day to keep it *holy.*" The religious basis is the only true, effective, or permanent basis for Sabbath-keeping, and this rules the whole question outside the domain of civil law.

Sunday laws not enforced for health.

Decided Oct. 4, 1909.

SUPREME COURT OF COLORADO.[1]

Plaintiff in error was convicted of violating section 1256 of the Municipal Code of the city and county of Denver. The section is as follows: "It shall be unlawful for any person, firm, or corporation to keep open or conduct any butcher shop, meat market, or grocery store, or to expose or offer for sale or sell any meats, fish, game, poultry, groceries, or provisions on the first day of the week, commonly called Sunday."

The municipal Sunday-closing ordinance.

It does not appear that the section, as framed, will promote the peace, welfare, health, or other ends for the promotion of which the police power of the city may be exercised.[2] Upon the authority of Denver *v.* Bach, 26 Colorado, 230, and for the reasons there given, the section of the Municipal Code under which plaintiff in error was convicted, is invalid.

Not in interests of peace, welfare, or health.

The judgment will, therefore, be reversed and the cause remanded, with instructions to dismiss the complaint. All the justices concurring.

[1] Mergen *v.* City and County of Denver, 46 Colorado, 385.

Usual ground for supporting Sunday laws.

[2] Since the separation of church and state became an established doctrine in the United States, the courts have generally sought to sustain the validity of Sunday laws upon the ground of their being enacted "in the legitimate exercise of the police power of the state," "for the promotion of the moral and physical well-being of the people." See Petit *v.* Minnesota, 177 U. S. Reports, 164 (1900), and case cited below. This decision repudiates this idea, so far at least as municipal Sunday laws are concerned.

No right to make leisure compulsory.

Seeking to sustain a Georgia Sunday law upon this ground, the Supreme Court of the United States, in 1896, in an opinion delivered by Justice Harlan, said: "Leisure is no less essential than labor to the well-being of man." Hennington *v.* Georgia, 163 U. S., 299. Even though the statement be admitted as true, it does not therefore follow that the state has any more right to make leisure than labor *compulsory*. Compulsory labor would be slavery. Compulsory leisure is no less a tyranny and usurpation of power. And compulsory *religious* rest, or sabbatizing, is *religious tyranny*. That Sunday laws are religious, and not mere "police regulations," is shown from the fact that in the case just cited, the court repeatedly referred to Sunday as "the Sabbath," "the Sabbath day," and "the Lord's day." See Justice Brewer on page 511.

PART V.

State Constitutions and Sunday Laws.

"Make the laws the protector and not the tyrant of the public."—*Goldsmith.*

"Allegiance is the right of the magistrate, and protection the right of the people."—*Blackstone.*

"Every person has the right to demand protection by the government."—*A. W. Young.*

"To protect liberty of conscience is the duty of the state, and this is the limit of its authority in matters of religion."—*"Great Controversy."*

STATE CONSTITUTIONS.

PROVISIONS OF THE CONSTITUTIONS OF THE SEVERAL STATES GUARANTEEING OR RESTRICTING LIBERTY OF CONSCIENCE.[1]

Revised up to 1910.

ALABAMA.

PREAMBLE.

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquillity, and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama:

Adopted by Constitutional convention Sept. 3, 1901. In effect Nov. 28, 1901.

That the great, general, and essential principles of liberty and form of government may be recognized and established, we declare:

SECTION 1. That all men are equally free and independent; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.

Inalienable rights.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination, or mode of worship; that no one shall be compelled by

Religious liberty.

[1] The provisions of the State Constitutions which either guarantee or restrict the rights of conscience are here inserted, though in the fundamental laws very few restrictions are made upon the rights of the individual; and when they are made, they not infrequently manifest their injustice and incompatibility with freedom by being absolutely contradictory to some of the provisions of the declaration of rights. To illustrate: Section 26 of the declaration of rights of the Constitution of Arkansas declares that "no religious test shall ever be required of any person as a disqualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief;" and then in article 19, section 1, we find the following: "No person who denies the existence of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court." In other States ministers of the gospel are disqualified from holding any civil office.

Restrictions of rights in Constitutions not frequent.

Contradictory provisions.

In the State of Vermont the declaration is made that "every sect or denomination of Christians ought to observe the Sabbath, or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God." Thus it is evident that the religio-political ideas of mediæval Europe have never been fully eradicated from our political institutions; but absolute religious liberty can never be attained while these church and state provisions remain on our statute books.

Sunday law in Vermont Constitution.

In the arrangement of the Constitutions, the marks of ellipses are omitted where sections are left out, as the numbering of the sections sufficiently indicates the omission. Where irrelevant matter has been omitted from sections, the omission is indicated in the usual way.

law to attend any place of worship; nor to pay any tithes, taxes, or other rates for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

ARTICLE XII.— EDUCATION.

Public funds not to be used for sectarian purposes.

SECTION 263. No money raised for the support of the public schools, shall be appropriated to or used for the support of any sectarian or denominational school.

ARKANSAS.

Ratified Oct. 13, 1874.

ARTICLE II.— DECLARATION OF RIGHTS.

Class legislation forbidden.

SECTION 18. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

Religious liberty.

SECTION 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given by law to any religious establishment, denomination, or mode of worship above any other.

Sectarian preference prohibited.

SECTION 25. Religion, morality, and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Religious tests prohibited.

SECTION 26. No religious test shall ever be required of any person as a qualification to vote or hold office; nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Rights to be enforced.

SECTION 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void.

ARTICLE XIX.— MISCELLANEOUS PROVISIONS.

Religious test.

SECTION 1. No person who denies the being of a God shall hold any office in the civil departments of this State, nor be competent to testify as a witness in any court

CALIFORNIA.

Ratified May 7, 1879.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be guaranteed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or the safety of the State.

Religious liberty.

ARTICLE IX.— EDUCATION.

SECTION 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of the State.

Public funds not to be used for sectarian purposes.

ARTICLE XX.— MISCELLANEOUS SUBJECTS.

SECTION 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.[1]

Marriage contract civil.

[1] This section is simply a constitutional provision for a firmly established American principle. The marriage contract is purely a civil contract, and the absence of religious ceremonies no more detracts from the validity of the marriage than does the absence of religious ceremonies detract from the validity of any other civil contract. In the history of American jurisprudence there is probably but a single isolated exception to this principle,— a Massachusetts decision in which it was held that "parties could not solemnize their own marriage," and that a marriage by mutual agreement, not in accordance with the statute, was void. "Johnson's Universal Cyclopedia" says:

American principle.

"In the United States by the law which prevails very generally, if not, in fact, universally, throughout the States, marriage is regarded as wholly based upon contract, upon the present mutual consent of the parties, and no special forms are necessary to its validity. If a man and a woman, by words of present import, promise and agree with each other to be husband and wife, the contract and the resulting status of marriage are perfected; solemnization by a clergyman or by a civil magistrate, the presence of witnesses, and all the ceremonies and forms which are customarily used, even those provided for by statute, are nothing more than convenient means of perpetuating the evidence of the contract between the spouses, which itself constitutes the marriage; *they are not in the least essential to its efficacy.* Whenever certain preliminary steps, such as license, notice, and the like, are prescribed by statute, a failure to comply with these provisions does not impair the marriage which has been contracted without their presence; it simply subjects the delinquent parties to a slight pecuniary penalty. The words of the contract by which the parties signify their intention must be *in præsenti* (of a present force and operation), and they do not need to be followed by a cohabitation, since the status of marriage arises from the mental and not the physical union of the spouses. In this respect the United States law of marriage is identical with that which has long prevailed in Scotland, so that the decision of the Scotch courts furnish valuable precedents which may be followed by our own tribunals."

No forms necessary to validity of marriage.

Violations of statutes do not invalidate a marriage.

Ratified July 1, 1876.

COLORADO.

ARTICLE II.— BILL OF RIGHTS.

Religious liberty.

SECTION 4. That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the good order, peace, or safety of the State. No person shall be required to attend or support any ministry or place of worship, religious sect, or denomination against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE IX.— EDUCATION.

Public funds not to be used for sectarian purposes.

SECTION 7. Neither the General Assembly, nor any county, city, town, township, school-district, or other public corporation shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, acad-

Leading case.

The leading case on this question is that of Dalrymple *v.* Dalrymple, 4 English Ecclesiastical Reports, 485, the decision being written by Lord Stowell, one of England's most distinguished judges. From that able opinion the following is taken:

Nature of marriage.

"Marriage, in its origin, is a contract of natural law. It may exist between two individuals of different sexes, although no third person existed in the world, as happened in the case of the common ancestors of mankind. It is the parent, not the child, of civil society. In civil society it becomes a civil contract, regulated and prescribed by law, and endowed with civil consequences. . . . It was natural that such a contract should, under the religious system which prevailed in Europe, fall under ecclesiastical notice and cognizance with respect both to its theological and its legal construction, though it is not unworthy of remark that amidst the manifold ritual provisions *made by the divine Lawgiver* of the Jews for various offices and transactions of life, *there is no ceremony prescribed for the celebration of marriage.* . . .

Nature of contract.

No divine ceremony prescribed.

Influence of Reformation.

"At the Reformation this country disclaimed, amongst other opinions of the Romish Church, the doctrine of a sacrament of marriage, though still retaining the idea of its being of divine institution in its general origin, and on that account, as well as of the religious forms that were prescribed for its regular celebration as an *holy* estate, *holy matrimony;* but it likewise retained those rules of the canon law which had their foundation, not in the sacrament or in any religious view of the subject, but in the *natural and civil contract of marriage.*"

On this question Mr. Bishop, in his treatise on "Marriage and Divorce," says:

What constitutes marriage.

"We have seen that the law compels no one to assume the matrimonial status. Therefore every marriage requires for its constitution a consent of the parties. The consent must be mutual; for, as there cannot be a husband without a wife, one of them cannot be married without the other. This mutual consent is in fact a contract, differing not essentially from other contracts. It is that circumstance without which the status of marriage is never superinduced upon the parties. And by the law of nature, by the

emy, seminary, college, university, or other literary or scientific institution controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian purpose.

Religious tests prohibited.

SECTION 8. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color.

Sectarian teaching prohibited.

CONNECTICUT.

Ratified Oct. 5, 1818.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in this State, provided that the right hereby declared and estab-

canon law prior to the Council of Trent, perhaps by the law of England as it stood before the passage of the first marriage act, by the law of Scotland, and by the laws of several of the United States, *nothing need be added to this simple consent to constitute perfect marriage.*

Consent the only requisite.

"Even where a statute requires the marriage to be attended with specified formalities, in order to its validity, this mutual consent of the parties is no less essential. The forms are not a substitute for it. *They are but methods of declaring and substantiating it; having reference to the matter of publicity or evidence.* If they are gone through with, without the added consent, the carriage is a nullity, as regards both the parties and third persons." Fifth edition, volume i, sections 218, 219.

Statutory provisions.

In Dumaresly *v.* Fishly (1821), 3 A. K. Marshall (Kentucky), the Chief Justice said:

"Marriage is nothing but a contract; and to render it valid, it is only necessary upon the principles of natural law that the parties should be able to contract, willing to contract, and should actually contract. A marriage thus made without ceremony was, according to the simplicity of the ancient common law, deemed valid to all purposes."

Nature of marriage.

Mr. Greenleaf, also, in his treatise on evidence, volume ii, page 531, says:

"Marriage is a civil contract *jure gentium,* to the validity of which the consent of the parties able to contract is all that is required by natural or public law. . . . And though in most if not all the United States, there are statutes regulating the celebration of marriage and inflicting penalties on all who disobey the regulations, yet it is generally considered that in the absence of any positive statute declaring that all marriages not celebrated in the prescribed manner shall be absolutely void, or that none but certain magistrates or ministers shall solemnize a marriage, *any marriage regularly made according to the common law, without observing the statutory regulations, would still be a valid marriage.*"

Requisites to a valid marriage.

Violations of statutes do not invalidate a marriage.

The following is from the case of Meister *v.* Moore (1877), 96 United States, 76, the opinion being delivered by Mr. Justice Strong of the United States Supreme Court:

"That such a contract [*per verba de præsenti*] constitutes a marriage at common law there can be no doubt, in view of the adjudications made in this country from its earliest settlement to the present day. Marriage is everywhere regarded as a civil contract."

Opinion of United States Supreme Court.

lished shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the State.

SECTION 4. No preference shall be given by law to any Christian sect or mode of worship.

ARTICLE VII.— OF RELIGION.

Provisions concerning religion.

SECTION 1. It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship in the mode most consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church, or religious association; but every person now belonging to such congregation, church, or religious association, shall remain a member thereof until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this State shall have and enjoy the same and equal powers, rights, and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner.

Religious preference prohibited.

SECTION 2. If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society.

DELAWARE.

Adopted June 4, 1897.

ARTICLE I.— BILL OF RIGHTS.

Religious liberty.

SECTION 1. Although it is the duty of all men frequently to assemble together for the public worship of Almighty God, and piety and morality, on which the prosperity of communities depends, are thereby promoted, yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall, in any case, interfere with, or in any manner control, the rights of conscience in the free exercise of religious worship; nor a preference given by law to any religious societies, denominations, or modes of worship.

Religious tests prohibited.

SECTION 2. No religious test shall be required as a qualification to any office or public trust under this State.

We declare that everything in this article is reserved out of the general powers of government hereinafter mentioned.

FLORIDA.

Framed Aug. 3, 1885.

DECLARATION OF RIGHTS.

Religious liberty.

SECTION 5. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State, and no person shall be rendered incompetent as a witness on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to justify licentiousness, or practices subversive of, or inconsistent with, the peace or moral safety of the State or society.

Religious preference prohibited.

SECTION 6. No preference shall be given by law to any church, sect, or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination, or in aid of any sectarian institution.

SECTION 24. This enunciation of rights shall not be construed to impair or deny others retained by the people.

ARTICLE XII.— EDUCATION.

Appropriations to sectarian schools prohibited.

SECTION 13. No law shall be enacted authorizing the diversion or the lending of any county or district school funds, or the appropriation of any part of the permanent available school fund to any other than school purposes; nor shall the same, or any part thereof, be appropriated to or used for the support of any sectarian school.

GEORGIA.

Adopted 1877.

ARTICLE I.

Section 1.

Protection to be impartial.

PARAGRAPH 2. Protection to person and property is the paramount duty of government, and shall be impartial and complete.

Religious tests prohibited.

PARAGRAPH 13. No inhabitants of this State shall be molested in person or property, or prohibited from holding any public office, or trust, on account of his religious opinions; but the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

Sectarian appropriations prohibited.

PARAGRAPH 14. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution.

IDAHO.

Adopted Aug. 6, 1889.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 4. The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity, on account of his

religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness, or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the State. . . .

Polygamy prohibited.

Religious preferences forbidden.

No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. . . .

ARTICLE IX.— EDUCATION AND SCHOOL LANDS.

Sectarian appropriations prohibited.

SECTION 5. Neither the Legislature, nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay for from any public fund or moneys whatever, anything in aid of any church, or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian or religious purpose.

No religious test nor tenets permitted.

SECTION 6. No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts, or documents of a political, sectarian, or denominational character shall be used or introduced in any school established under the provisions of this article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

ILLINOIS.

Ratified July 2, 1870.

ARTICLE II.— BILL OF RIGHTS.

Religious liberty.

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify prac-

tices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE VIII.— EDUCATION.

SECTION 3. Neither the General Assembly nor any county, city, town, township, school-district, or other public corporation, shall ever make any appropriation, or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose. Public funds not to be used for sectarian purposes.

INDIANA.

Ratified 1851.

ARTICLE I.— BILL OF RIGHTS.

SECTION 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences. Religious liberty.

SECTION 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SECTION 4. No preference shall be given by law to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. Religious preferences prohibited.

SECTION 5. No religious test shall be required as a qualification for any office of trust or profit. Religious tests prohibited.

SECTION 6. No money shall be drawn from the treasury for the benefit of any religious or theological institution.

SECTION 7. No person shall be rendered incompetent as a witness in consequence of his opinions on matters of religion.

SECTION 8. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered. Administration of oaths.

ARTICLE VIII.— EDUCATION.

SECTION 3. The principal of the common school fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of common schools, and to no other purpose whatever. Funds not to be diverted.

IOWA.

Ratified Aug. 3, 1857.

ARTICLE I.— BILL OF RIGHTS.

Religious liberty.

SECTION 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister or ministry.

Religious tests prohibited.

SECTION 4. No religious test shall be required as a qualification for any office of public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion. . . .

Class legislation forbidden.

SECTION 6. All laws of a general nature shall have a uniform operation. The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not belong equally to all citizens.

KANSAS.

Ratified Oct. 4, 1859.

BILL OF RIGHTS.

Religious liberty.

SECTION 7. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of, or interference with, the rights of conscience be permitted; nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election; nor shall any person be incompetent to testify on account of religious belief.

ARTICLE VI.— EDUCATION.

School funds.

SECTION 8. No religious sect or sects shall ever control any part of the common-school or university funds of the State.

KENTUCKY.

Adopted Sept. 28, 1891.

PREAMBLE.

Grateful for liberties.

We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political, and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

BILL OF RIGHTS.

All equal.

SECTION 1. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties.

Second: The right of worshiping Almighty God according to the dictates of their consciences. Religious liberty.

SECTION 5. No preference shall ever be given by law to any religious sect, society, or denomination; nor to any particular creed, mode of worship, or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister or religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges, or capacities of no person shall be taken away, or in any wise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma, or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience. Religious preferences prohibited. Rights of conscience beyond human authority.

SECTION 26. To guard against transgression of the high powers which we have delegated, WE DECLARE that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

EDUCATION.

SECTION 189. No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school. Public funds not to be misapplied.

GENERAL PROVISIONS.

SECTION 232. The manner of administering an oath or affirmation shall be such as is most consistent with the conscience of the deponent, and shall be esteemed by the General Assembly the most solemn appeal to God. Oaths.

LOUISIANA.

Adopted May 12, 1898.

BILL OF RIGHTS.

ARTICLE 4. Every person has the natural right to worship God, according to the dictates of his conscience, and no law shall be passed respecting an establishment of religion. No religious legislation.

LIMITATIONS OF LEGISLATIVE POWERS.

ARTICLE 53. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect, or creed of State not to support religion. Religious preferences prohibited.

religion, or any form of religious faith or worship, nor shall any appropriations be made for private, charitable, or benevolent purposes to any person or community. . . .

PUBLIC EDUCATION.

Public funds not for sectarian schools.

ARTICLE 253. No funds raised for the support of the public schools of the State shall be appropriated to, or used for, the support of any private or sectarian schools.

MAINE.

Ratified Jan. 5, 1820.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested, or restrained in his person, liberty, or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship; and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination or preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Rights secured.

MARYLAND.

Ratified Sept. 18, 1867.

DECLARATION OF RIGHTS.

Grateful for civil and religious liberty.

We, the people of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in this State for the sure foundation and more permanent security thereof, declare:

. . . . . .

Religious liberty.

ARTICLE 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights; nor ought any person to be compelled to frequent or main-

tain, or contribute, unless under contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; *Provided,* he believes in the existence of God, and that, under his dispensation, such person will be held morally accountable for his acts, and be rewarded or punished therefor in this world or the world to come. Religious tests.

ARTICLE 37. That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.

ARTICLE III.— LEGISLATIVE DEPARTMENT.

SECTION 11. No minister or preacher of the gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible as senator or delegate. Religious disability.

MASSACHUSETTS.

Ratified 1780.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE COMMONWEALTH OF MASSACHUSETTS.

ARTICLE 2. It is the right as well as the duty of all men in society, publicly and at stated seasons, to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession or sentiments, provided he doth not disturb the public peace, or obstruct others in their religious worship. Religious liberty.

ARTICLE 3. As the public worship of God, and the instructions in piety, religion, and morality, promote the happiness and prosperity of a people, and the security of a republican government; *Therefore,* the several religious societies of this commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses; and all persons belonging to any religious society shall be taken and held to be members, until they shall file with the clerk of such society a written notice declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract which may be thereafter made or entered into by such society; and all religious sects and denominations, demeaning them- Modification and amendment of Art. III. Ratified 1833.

Sectarian preference prohibited.

selves peaceably and as good citizens of the commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

MICHIGAN.

Ratified 1850.

ARTICLE IV.— LEGISLATIVE DEPARTMENT.

Religious liberty.

SECTION 39. The Legislature shall pass no law to prevent any person from worshiping Almighty God according to the dictates of his own conscience, or to compel any person to attend, erect, or support any place of religious worship, or to pay tithes, taxes, or other rates for the support of any minister of the gospel or teacher of religion.

Public funds not to be used for sectarian purposes.

SECTION 40. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

Religious preference forbidden.

SECTION 41. The Legislature shall not diminish or enlarge the civil or political rights, privileges, and capacities of any person on account of his opinion or belief concerning matters of religion.

ARTICLE VI.— JUDICIAL DEPARTMENT.

SECTION 34. No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief.

MINNESOTA.

Ratified 1857.

ARTICLE I.— BILL OF RIGHTS.

Religious liberty.

SECTION 16. The enumeration of rights in this Constitution shall not be construed to deny or impair others retained by and inherit in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent, nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries.

Religious tests prohibited.

SECTION 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required

as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

MISSISSIPPI.

Adopted Nov. 1, 1890.

ARTICLE III.— BILL OF RIGHTS.

Religious liberty.

SECTION 18. No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect, or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the State, or exclude the Holy Bible from use in any public school of this State.

ARTICLE VIII.— EDUCATION.

State not to support sectarian schools.

SECTION 208. No religious or other sect, or sects, shall ever control any part of the school or other educational funds of this State; nor shall any funds be appropriated towards the support of any sectarian school; or to any school that at the time of receiving such appropriation is not conducted as a free school.

ARTICLE XIV.— GENERAL PROVISIONS.

Religious disqualification for office.

SECTION 265. No person who denies the existence of a Supreme Being shall hold any office in this State.

MISSOURI.

Ratified Oct. 30, 1875.

ARTICLE II.— BILL OF RIGHTS.

Religious liberty.

SECTION 5. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no person can, on account of his religious opinions, be rendered ineligible to any office of trust or profit under this State, nor be disqualified from testifying, or from serving as a juror; that no human authority can control or interfere with the rights of conscience; that no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace, or safety of this State, or with the rights of others.

SECTION 6. That no person can be compelled to erect, support, or attend any place or system of worship, or to maintain or support any priest, minister, preacher, or teacher of any sect, church, creed, or

denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Public funds not to be used for sectarian purposes.

SECTION 7. That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister, or teacher thereof as such, and that no preference shall be given to, nor any discrimination made against, any church, sect, or creed of religion, or any form of religious faith or worship.

SECTION 8. That no religious corporation can be established in this State, except such as may be created under a general law for the purpose only of holding the title to such real estate as may be prescribed by law for church edifices, parsonages, and cemeteries.

ARTICLE XI.— EDUCATION.

Public funds not to be used for sectarian purposes.

SECTION 11. Neither the General Assembly, nor any county, city, town, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, anything in aid of any religious creed, church, or sectarian purpose; or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning, controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.[1]

MONTANA.

Ratified 1889.

ARTICLE III.— A DECLARATION OF RIGHTS OF THE PEOPLE OF THE STATE OF MONTANA.

Religious liberty.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed, and no person shall be denied any civil or political right or privilege on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, by bigamous or polygamous marriage, or otherwise, or justify practices inconsistent with the good order, peace, or safety of the State, or opposed to the civil authority thereof, or of the United States. No

Separation of state and religion.

[1] The American principle of absolute separation of the state from religion requires the state to carry out these provisions to the letter. If all men are equal,— which is a self-evident truth,— the Christian has no right whatever to the use of public funds or to the services of any one hired by public money, for the propagation of the religion which he believes.

person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; nor shall any preference be given by law to any religious denomination or mode of worship.

ARTICLE XI.— EDUCATION.

Public funds not to be used for sectarian purposes.

SECTION 8. Neither the Legislative Assembly, nor any county, city, town, or school district, or other public corporations, shall ever make, directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school, academy, seminary, college, university, or other literary, scientific institution, controlled in whole or in part by any church, sect, or denomination whatever.

No religious tests nor tenets permitted.

SECTION 9. No religious or partizan test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; nor shall attendance be required at any religious service whatever, nor shall any sectarian tenets be taught in any public educational institution of the State; nor shall any person be debarred admission to any of the collegiate departments of the university on account of sex.

NEBRASKA.

Ratified Oct. 12, 1875.

ARTICLE I.— BILL OF RIGHTS.

Religious liberty.

SECTION 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect, or support any place of worship against his consent, and no preference shall be given by law to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Religious tests prohibited.

ARTICLE VIII.— EDUCATION.

SECTION 11. No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes; nor shall the State accept any grant, conveyance, or bequest of money, lands, or other property, to be used for sectarian purposes.

Ratified 1864.

NEVADA.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

ARTICLE XI.— EDUCATION.

Sectarian instruction prohibited.

SECTION 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this Constitution.

State funds not to be misappropriated.

SECTION 10. No public funds of any kind or character whatever, State, county, or municipal, shall be used for sectarian purposes.

Ratified 1902.

NEW HAMPSHIRE.

PART I.— BILL OF RIGHTS.

Rights of conscience.

ARTICLE 4. Among the natural rights, some are in their very nature unalienable, because no equivalent can be given or received for them. Of this kind are the rights of conscience.

Religious liberty.

ARTICLE 5. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no subject shall be hurt, molested, or restrained in his person, liberty, or estate for worshiping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion, provided he doth not disturb the public peace or disturb others in their religious worship.

Establishment of state religion.

ARTICLE 6. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay in the hearts of men the strongest obligations to due subjection; and as a knowledge of these is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion; *Therefore,* to promote these important purposes, the people of this State have a right to empower, and do hereby fully empower, the Legislature to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies within this State, to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality.[1]

Protestant religion established.

[1] This article, taken from the Constitution ratified in 1792, is a relic of the old colonial religious establishments. It is sectarian, in that it provides for the "support and maintenance of public *Protestant* teachers of piety,

Provided, notwithstanding, that the several towns, parishes, bodies corporate, or religious societies, shall at all times have the exclusive right of electing their own public teachers, and of contracting with them for their support and maintenance. And no person, or any one particular religious sect or denomination, shall ever be compelled to pay toward the support of the teacher or teachers of another persuasion, sect, or denomination. Republican state-churchism.

And every denomination of Christians, demeaning themselves quietly and as good subjects of the State, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law. Sectarian preference prohibited.

And nothing herein shall be understood to affect any former contracts made for the support of the ministry; but all such contracts shall remain and be in the same state as if this Constitution had not been made.

NEW JERSEY.

Ratified Aug. 13, 1844.

ARTICLE I.— RIGHTS AND PRIVILEGES.

Three. No person shall be deprived of the inestimable privilege of worshiping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place of worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform. Religious liberty.

Four. There shall be no establishment of one religious sect in preference to another; no religious test shall be required as a qualification for any office or public trust; and no person shall be denied the enjoyment of any civil right merely on account of his religious principles. Religious preferences prohibited.

NEW MEXICO.

Adopted Sept., 1890.

ARTICLE II.— BILL OF RIGHTS.

SECTION 14. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, is hereby Religious liberty.

religion, and morality." It thus virtually establishes Protestantism as the state religion, and empowers the Legislature to "make adequate provision" for the "support and maintenance" of its public teachers. In this connection read Madison's "Memorial and Remonstrance," *ante* page 119. Coming from a State with virtually an established religion, it is perhaps not so surprising that Senator Blair, in 1888, proposed a strict and sweeping national Sunday law, and an educational amendment to the Constitution of the United States virtually establishing the Christian religion as the national religion. See pages 360, 364.

guaranteed, and no person shall be rendered incompetent to be a witness or a juror on account of his opinions on matters of religious belief, but the liberty of conscience hereby secured shall not excuse acts of licentiousness, or justify polygamous practices or other acts inconsistent with morality or the peace or safety of the State, nor permit any person, organization, or association, directly or indirectly to aid or abet, counsel or advise any person to commit bigamy or polygamy, or any other crime. Bigamy and polygamy are forever prohibited.

Polygamy prohibited.

SECTION 26. The natural right of the people to one day of rest in every seven is hereby acknowledged.

ARTICLE IX.— EDUCATION.

SECTION 1. Provision shall be made by law for the establishment and maintenance of a uniform system of public schools, which shall be open to and sufficient for the education of all the children in the State, and shall be under the absolute control of the State, and free from sectarian or church control; and no other or different schools shall ever receive any aid or support from public funds. No sectarian tenet, creed, or church doctrine shall be taught in the public schools.

Separation of schools from sectarian instruction.

SECTION 2. . . . But no part of such [school] funds, nor of any other funds created or authorized by law for educational purposes, shall ever be applied toward the maintenance, support, or aid of any school or other institution in the management of which any religious or other sect has any part, or which is not under the absolute control of the State. The provisions of this and the last preceding section are hereby declared to be irrevocable without the consent of the United States and the people of this State.

School funds not to be used for sectarian purposes.

SECTION 6. Provision shall be made by law for teaching the principles of the Constitutions of the United States and of this State in the common schools. All teachers in the public schools shall be citizens of the United States, properly qualified, and persons of good moral character.

American principles to be taught.

SECTION 7. No religious test shall ever be required of any person as a condition of admission into any public educational institution of the State, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever; nor shall any distinction or classification of pupils be made on account of race or color.

Religious tests prohibited.

ARTICLE XVIII.— COMPACT WITH THE UNITED STATES.

SECTION 3. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship, nor shall any preference be given by law to any religious establishment. No religious test shall be required for any office or for any

Guaranty of religious liberty.

vote at any election; nor shall any person be incompetent to testify on account of his or her opinions on matters of religious belief, nor be questioned in any court touching such opinions so as to affect the weight of his or her testimony.

NEW YORK.

Ratified Nov. 6, 1894.

ARTICLE I.

SECTION 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Religious liberty.

ARTICLE IX.— EDUCATION.

SECTION 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination and inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

State not to support denominational schools.

NORTH CAROLINA.

In effect July 1, 1902.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 26. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights of conscience.

Religious liberty.

ARTICLE VI.— SUFFRAGE AND ELIGIBILITY TO OFFICE.

SECTION 8. The following classes of persons shall be disqualified for office: First, all persons who shall deny the being of Almighty God; second, all persons who shall have been convicted or confessed their guilt on indictment pending, and whether sentenced or not, or under judgment suspended, of any treason or felony, or of any other crime for which the punishment may be imprisonment in the penitentiary, since becoming citizens of the United States, or of corruption or malpractice in office, unless such person shall be restored to the rights of citizenship in a manner prescribed by law.[1]

Religious disqualifications.

[1] This article, by *reductio ad absurdum*, makes the injustice of disqualifying atheists from holding public trusts peculiarly manifest. "Persons who shall have been convicted of treason, perjury, or of any other infamous crime" can hold office when "legally restored to the rights of citizenship;"

Absurdity of disqualifying atheists.

ARTICLE IX.— EDUCATION.

SECTION 1. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

NORTH DAKOTA.

Ratified 1889.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this State, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Rights to be enforced.

SECTION 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate.

but an atheist, never — unless he compromises his manhood by becoming a hypocrite and perjurer by swearing that he believes in God (when he does not), and then he is rewarded by having all disqualifications removed! This contemptible way of gaining accessions to Christianity from the servile classes has ever been a characteristic of state religion; in fact, is a necessary consequence of its existence. Gibbon, in relating how state Christianity first obtained the ascendancy in the Roman empire, says:

Illustration of conferring political rewards for embracing Christianity.

"The exact balance of the two religions [paganism and Christianity] continued but a moment; and the piercing eye of ambition and avarice soon discovered that the profession of Christianity might contribute to the interest of the present as well as of a future life. The hopes of wealth and honors, the example of an emperor, his exhortations, his irresistible smiles, diffused conviction among the venal and obsequious crowds which usually fill the apartments of a palace. The cities which signalized a forward zeal by the voluntary destruction of their temples, were distinguished by municipal privileges, and rewarded with popular donatives; and the new capital of the East gloried in the singular advantage that Constantinople was never profaned by the worship of idols. As the lower ranks of society are governed by imitation, the conversion of those who possessed any eminence of birth, of power, or of riches, was soon followed by dependent multitudes. The salvation of the common people was purchased at an easy rate, if it be true that, in one year, twelve thousand men were baptized at Rome, besides a proportionable number of women and children, and that a white garment, with twenty pieces of gold, had been promised by the emperor to every convert."

Treatment of unbelievers of principle.

The unbeliever, however, who will not compromise principle for any reward, not even the highest office in the land, is rewarded by being placed politically beneath the level of hypocrites and the basest felons! No wonder that John Adams wrote to Jefferson that "we think ourselves possessed, or at least we boast that we are so, of liberty of conscience on all subjects, and of the right of free inquiry and private judgment in all cases," and then said, "yet how far are we from these exalted privileges in fact!"

Adams's exclamation.

Mr. John Stuart Mill, in discoursing on this subject, in his essay "On Liberty," writes as follows:

ARTICLE VIII.— EDUCATION.

SECTION 152. All colleges, universities, and other educational institutions, for the support of which lands have been granted to this State, or which are supported by a public tax, shall remain under the absolute and exclusive control of the State. No money raised for the support of the public schools of the State shall be appropriated to or used for the support of any sectarian school.

School funds not to be used for sectarian purposes.

"It will be said that we do not now put to death the introducers of new opinions; we are not like our fathers who slew the prophets, we even build sepulchers to them. It is true we no longer put heretics to death; and the amount of penal infliction which modern feeling would probably tolerate, even against the most obnoxious opinions, is not sufficient to extirpate them. But let us not flatter ourselves that we are yet free from the stain even of legal persecution. Penalties for opinion, or at least for its expression, still exist by law; and their enforcement is not, even in these times, so unexampled as to make it at all incredible that they may some day be revived in full force. In the year 1857, at the summer assizes of the county of Cornwall, an unfortunate man said to be of unexceptionable conduct in all relations of life, was sentenced to twenty-one months' imprisonment for uttering, and writing on a gate, some offensive words concerning Christianity. [A number of instances also might be cited in the United States, notably, People *v.* Ruggles, 8 Johnson (New York), 290; State *v.* Chandler, 2 Harrington (Delaware), 553; Updegraph *v.* Commonwealth, 11 Sergeant and Rawle (Pennsylvania), 394; and Commonwealth *v.* Kneeland, 20 Pickering (Massachusetts), 206.] Within a month of the same time, at the Old Bailey, two persons, on two separate occasions, were rejected as jurymen, and one of them grossly insulted by the judge and by one of the counsel, because they honestly declared that they had no theological belief; and a third, a foreigner, for the same reason was denied justice against a thief. This refusal of redress took place in virtue of the legal doctrine that no person can be allowed to give evidence in a court of justice, who does not profess belief in a God (any god is sufficient) and in a future state; which is equivalent to declaring such persons to be outlaws, excluded from the protection of the tribunals; who may not only be robbed or assaulted with impunity, if no one but themselves, or persons of similar opinions, be present, but any one else may be robbed or assaulted with impunity, if the proof of the fact depends on their evidence. The assumption on which this is grounded, is that the oath is worthless, of a person who does not believe in a future state; a proposition which betokens much ignorance of history in those who assent to it (since it is historically true that a large proportion of infidels in all ages have been persons of distinguished integrity and honor); and would be maintained by no one who had the smallest conception of how many of the persons in greatest repute with the world, both for virtues and attainments, are well known, at least to their intimates, to be unbelievers. The rule, besides, is suicidal, and cuts away its own foundation. Under pretense that atheists must be liars, it admits the testimony of all atheists who are willing to lie, and rejects only those who brave the obloquy of publicly confessing a detested creed rather than affirm a falsehood. A rule thus self-convicted of absurdity so far as regards its professed purpose, can be kept in force only as a badge of hatred, a relic of persecution — a persecution, too, having the peculiarity that the qualification for undergoing it, is the being clearly proved not to deserve it. The rule and the theory it implies, are hardly less insulting to believers than to infidels. For if he who does not believe in the future state necessarily lies, it follows that they who do believe are only prevented from lying, if prevented they are, by the fear of hell. We will not do the authors and abettors of the rule the injury of supposing that the conception which they have formed of Christian virtue is drawn from their own consciousness.

An apt application of scripture.

Penalties for expression of opinion.

American cases.

Unjust legal doctrine.

Characteristic of infidels.

A contradictory doctrine.

A badge of hatred.

An insulting rule.

ARTICLE XVI.— COMPACT WITH THE UNITED STATES.

SECTION 203. The following article shall be irrevocable without the consent of the United States and the people of this State:

Perfect "toleration" secured.

First, perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

OHIO.

Ratified 1851.

Amended 1906.

ARTICLE I.— BILL OF RIGHTS.

SECTION 7. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Religious rights.

Religious tests prohibited.

ARTICLE VI.— EDUCATION.

SECTION 1. The principal of all funds arising from the sale or other disposition of lands or other property, granted or intrusted to this State for educational and religious purposes, shall forever be preserved inviolate and undiminished; and the income arising therefrom

Funds held in trust.

Relics of persecution.

"These, indeed, are but rags and remnants of persecution, and may be thought to be not so much an indication of the wish to persecute, as an example of that very frequent infirmity of English minds, which makes them take a preposterous pleasure in the assertion of a bad principle, when they are no longer bad enough to desire to carry it really into practice. But unhappily there is no security in the state of the public mind, that the suspension of worse forms of legal persecution, which has lasted for about the space of a generation, will continue. In this age the quiet surface of routine is as often ruffled by attempts to resuscitate past evils, as to introduce new benefits. What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong, permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution."

Present dangers.

Modern bigotry.

Religious liberty.

Religious liberty must be absolute; for the same logic that would give the state the power to require belief in God, would give it the power to require belief in any other doctrine to which the majority might take a fancy.

shall be faithfully applied to the specific objects of the original grants or appropriations.

SECTION 2. The General Assembly shall make such provisions, by taxation or otherwise, as, with the interest arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but no religious or other sect or sects shall ever have any exclusive right to or control of any part of the school funds of this State.

School funds not to be under sectarian control.

OKLAHOMA.

Ratified Sept. 17, 1907.

ARTICLE I.— FEDERAL RELATIONS.

SECTION 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her mode of religious worship; and no religious test shall be required for the exercise of civil or political rights. . . .

"Perfect "toleration" guaranteed.

Religious test forbidden.

ARTICLE II.— BILL OF RIGHTS.

SECTION 5. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

Public funds not to be used for sectarian purposes.

OREGON.

Ratified Nov. 9, 1857.

ARTICLE I.— BILL OF RIGHTS.

SECTION 2. All men shall be secured in their natural right to worship Almighty God according to the dictates of their own consciences.

Religious liberty.

SECTION 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

SECTION 4. No religious test shall be required as a qualification for any office of trust or profit.

Religious test prohibited.

SECTION 5. No money shall be drawn from the treasury for the benefit of any religious or theological institution, nor shall any money be appropriated for the payment of any religious service, in either house of the Legislative Assembly.

Public funds not to be used for sectarian uses.

SECTION 6. No person shall be rendered incompetent as a witness or juror in consequence of his opinions on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Administration of oaths.

SECTION 7. The mode of administering an oath or affirmation shall be such as may be most consistent with, and binding upon, the conscience of the person to whom such oath or affirmation may be administered.

Class legislation forbidden.

SECTION 21. No law shall be passed granting to any citizen or class of citizens privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

PENNSYLVANIA.

Ratified Dec. 16, 1873

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Religious disability.

SECTION 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this commonwealth.

ARTICLE X.— EDUCATION.

School funds not to go to any sectarian school.

SECTION 2. No money raised for the support of the public schools of the commonwealth shall be appropriated to or used for the support of any sectarian school.

PHILIPPINES.

[From "Public Laws Passed by the Philippine Commission," volume i, 1903.]

PRESIDENT'S INSTRUCTION TO THE COMMISSION.

(Signed by William McKinley.)

Separation of church and state to be absolute.

That no form of religion and no minister of religion shall be forced upon any community or upon any citizen of the islands; that, upon the other hand, no minister of religion shall be interfered with or molested in following his calling, and that the separation between state and church shall be real, entire, and absolute.

. . . . . .

The main body of the laws which regulate the rights and obligations of the people should be maintained with as little interference as possible. Changes made should be mainly in procedure and in the criminal laws to secure speedy and impartial trials, and at the same time effective administration and respect for individual rights.

RHODE ISLAND.

Ratified Nov. 23, 1842.

ARTICLE I.— DECLARATION OF CERTAIN CONSTITUTIONAL RIGHTS AND PRINCIPLES.

Rights to be secured.

In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial, and executive proceedings.

Preamble.

SECTION 3. *Whereas,* Almighty God hath created the mind free, and all attempts to influence it by temporal punishments, or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and, *Whereas,* a principal object of our venerable ancestors, in their migration to this country and their settlement of this State, was, as they expressed it, to hold forth a lively experiment that a flourishing civil state may stand and be best maintained with full liberty in religious concernments; *We therefore declare,* that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfilment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess, and by argument to maintain, his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

Religious liberty.

SOUTH CAROLINA.

Ratified Dec. 4, 1895.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious legislation prohibited.

SECTION 4. The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or the press. . . .

ARTICLE XI.— EDUCATION.

Sectarian schools not to be supported by State funds.

SECTION 9. The property or credit of the State of South Carolina, or of any county, city, town, township, school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not, by gift, donation, loan, contract, appropriation, or otherwise, be used, directly or indirectly, in aid or maintenance of any college, school, hospital, orphan house, or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society, or organization.

ARTICLE XIV.— MISCELLANEOUS.

Religious disqualification.

SECTION 6. No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

SOUTH DAKOTA.

Ratified Oct. 1, 1889.

ARTICLE VI.— BILL OF RIGHTS.

Religious liberty.

SECTION 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right, privilege, or position on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State. No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Public funds not to be used for sectarian purposes.

TENNESSEE.

Ratified Mar. 26, 1870.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship.

Religious liberty.

Religious tests prohibited.

SECTION 4. That no political or religious test, other than an oath to support the Constitution of the United States and of this State, shall ever be required as a qualification to any office or public trust under this State.

SECTION 6. That the right of trial by jury shall remain inviolate, and no religious or political test shall ever be required as a qualification for jurors.

ARTICLE IX.— DISQUALIFICATIONS.

Religious disqualification.

SECTION 1. *Whereas,* Ministers of the gospel are, by their profession, dedicated to God and the care of souls, and ought not to be diverted from the great duties of their functions; *Therefore,* no minister of the gospel, or priest of any denomination whatever, shall be eligible to a seat in either house of the Legislature.

SECTION 2. No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of this State.

ARTICLE XI.— MISCELLANEOUS PROVISIONS.

SECTION 15. No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest. Religious equality.

TEXAS.

Ratified Feb. 17, 1876.

ARTICLE I.— BILL OF RIGHTS.

SECTION 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship. Religious liberty.

SECTION 7. No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes. Public funds not to be used for sectarian purposes.

ARTICLE VII.— EDUCATION — THE PUBLIC FREE SCHOOLS.

SECTION 5. . . . And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same or any part thereof ever be appropriated to or used for the support of any sectarian school. . . . School funds not to be used for sectarian purposes.

UTAH.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 1. INHERENT AND INALIENABLE RIGHTS. All men have the inherent and inalienable right to . . . worship according to the dictates of their consciences; . . . to communicate freely their thoughts and opinions, being responsible for the abuse of that right. Adopted Nov. 5, 1895. Inherent rights.

SECTION 4. RELIGIOUS LIBERTY. The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of church and state, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or for the support of any ecclesiastical establishment. Religious liberty.

Article X, Sec. 13, prohibits State aid to sectarian schools.

VERMONT

Established July 10, 1793.

CHAPTER I.— DECLARATION OF RIGHTS.

Religious liberty.

ARTICLE 3. That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can, be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience; nor can any man be justly deprived or abridged of any civil rights as a citizen, on account of his religious sentiments or peculiar mode of religious worship; and that no authority can or ought to be vested in or assumed by any power whatever, that shall in any case interfere with or in any manner control the rights of conscience in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the Sabbath, or Lord's day,[1] and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

Sabbath observance and denominational worship declared to be a duty.

RELIGIOUS SOCIETIES.

Religious and educational societies to be encouraged and protected.

SECTION 41. . . . All religious societies, or bodies of men, that may be hereafter united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the General Assembly of this State shall direct.

VIRGINIA.

In effect July 10, 1902.

ARTICLE I.— BILL OF RIGHTS.

Religious liberty.

SECTION 16. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other.

ARTICLE IV.— LEGISLATIVE DEPARTMENT.

Religious liberty.

SECTION 58. . . . No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect their civil capacities. And the Gen-

Absurdity of state-churchism.

[1] As well might the state say that "every sect or denomination of Christians ought to baptize, partake of the Lord's supper, offer prayer three times a day, and read their Bibles regularly."

eral Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please. Religious preferences prohibited.

SECTION 59. The General Assembly shall not grant a charter of incorporation to any church or religious denomination, but may secure the title to church property to an extent to be limited by law.

WASHINGTON.

Ratified 1889.

ARTICLE I.— DECLARATION OF RIGHTS.

SECTION 6. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered. Administration of oaths.

SECTION 11. Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for, or applied to, religious worship, exercise, or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. Religious liberty.

ARTICLE IX.— EDUCATION.

SECTION 4. All schools supported wholly or in part by the public funds shall be forever free from sectarian control or influence. No sectarian control.

ARTICLE XXVI.— COMPACT WITH THE UNITED STATES.

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

First, That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship. Perfect "toleration" secured.

Fourth, Provision shall be made for the establishment and maintenance of systems of public schools free from sectarian control, which shall be open to all the children of said State.

Ratified Aug. 22, 1872.

WEST VIRGINIA.

ARTICLE III.— BILL OF RIGHTS.

Political and religious tests prohibited.

SECTION 11. Political tests, requiring persons, as a prerequisite to the enjoyment of their civil and political rights, to purge themselves by their own oath of past alleged offenses, are repugnant to the principles of free government, and are cruel and oppressive. No religious or political test oath shall be required as a prerequisite or qualification to vote, serve as a juror, sue, plead, appeal, or pursue any profession or employment; nor shall any person be deprived by law of any right or privilege because of any act done prior to the passage of such law.

Religious liberty.

SECTION 15. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever; nor shall any man be enforced, restrained, molested, or burdened in his body or goods, or otherwise suffer, on account of his religious opinions or beliefs; but all men shall be free to profess, and by argument to maintain, their opinions in matters of religion; and the same shall in no wise affect, diminish, or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house for public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support such private contract as he shall please.

Ratified March, 1848.

WISCONSIN.

ARTICLE I.— DECLARATION OF RIGHTS.

Religious liberty.

SECTION 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. Nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law to any religious establishments or modes of worship. Nor shall any money be drawn from the treasury for the benefit of religious societies or religious or theological seminaries.

Religious tests prohibited.

SECTION 19. No religious tests shall ever be required as a qualification for any office of public trust under the State, and no person shall be rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion.

ARTICLE X.— EDUCATION.

Sectarian instruction prohibited.

SECTION 3. The Legislature shall provide by law for the establishment of district schools, . . . and no sectarian instruction shall be allowed therein.

SECTION 6. Provision shall be made by law for the establishment of a State university, . . . and no sectarian instruction shall be allowed in such university.

WYOMING.

Adopted Nov. 5, 1889.

ARTICLE I.— DECLARATION OF RIGHTS.

Recognition of rights.

SECTION 7. Absolute, arbitrary power over the lives, liberty, and property of freemen exists nowhere in a republic, not even in the largest majority.

Religious liberty.

SECTION 18. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this State, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the State.

SECTION 19. No money of the State shall ever be given or appropriated to any sectarian or religious society or institution.

ARTICLE VI.— SUFFRAGE.

Equality of rights.

SECTION 1. The rights of citizens of the State of Wyoming to vote and hold office shall not be denied or abridged on account of sex. Both male and female citizens of this State shall equally enjoy all civil, political, and religious rights and privileges.

ARTICLE VII.— EDUCATION.

Schools to be free from sectarianism.

SECTION 12. No sectarian instruction, qualifications, or tests shall be imparted, exacted, applied, or in any manner tolerated in the schools of any grade or character controlled by the State, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this Constitution.

ORDINANCE.

Perfect "toleration."

SECTION 2. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

INCREASE OF SUNDAY LEGISLATION IN THE UNITED STATES.

As an indication of the increase of Sunday legislation in the United States during recent years, it may be noted that in 1890, when this work was first issued, fifty-three pages sufficed to contain all the Sunday laws of this country. Now, twenty-one years later, ninety-three pages are required for this purpose,— an increase of forty pages, or over seventy-five per cent. See pages following.

Seventy-five per cent increase.

And when it is remembered that every such law is a blot upon the escutcheon of American liberty, a denial of the inalienable rights of man, and in direct conflict with one of the most cherished and widely proclaimed principles of American government, the rapidity with which matters here are drifting back into the old order of things is apparent.

Drifting backward.

Every additional law of this kind only strengthens the bonds uniting church and state, places another weapon in the hands of ecclesiastical tyranny, and presages the time when the rights of conscience will no longer be respected in this boasted land of freedom.

That all of these laws are religious, may be seen by comparing them with their originals, in Parts I and VIII, pages 33-58, 749-756.

That many of them have already been the means of oppressing and persecuting conscientious observers of another day, is shown by matter presented in Part VI, pages 651-730.

Means of oppression.

That they are in conflict with recognized inalienable and constitutional rights, see declarations of rights in preceding pages, 523-555.

That they are contrary to the principles of Jesus Christ, and therefore un-Christian, compare them with Matt. 7: 12 and 22: 21.

That they are in direct conflict with the law of God, which commands the observance of another day, see Ex. 20: 8-11.

Conflict with law of God.

That they are inconsistent with themselves, note how the same act is punished by widely varying penalties in different States, a dollar in Arkansas, South Carolina, and South Dakota, and fifty dollars in Connecticut (pages 559, 631, 634, 564); and how even in the same State similar acts are treated very differently, as in Tennessee, where a merchant, artificer, or tradesman, may do business on Sunday and be liable to a fine of only three dollars, whereas a barber to do so is subject to a fine of fifty dollars and thirty days' imprisonment. See pages 634, 635.

Inconsistencies.

That they are fundamentally wrong in every way, are the forerunners of a complete union of church and state, and are calculated to weaken and undermine rather than to strengthen and preserve a nation, is clearly shown by the unanswerable arguments presented in the Sunday Mail Reports adopted by Congress in 1829 and 1830, by various memorials sent to Congress from time to time, and by the matter presented in Part VII. See pages 233-340, 380-397, 731-748.

Fundamentally wrong.

SUNDAY LAWS OF THE UNITED STATES.

PROVISIONS OF THE SEVERAL STATES PROHIBITING SECULAR LABOR, ETC., ON SUNDAY.[1]

ALABAMA.

[Code of Alabama, 1907, volume iii, chapter 295.]

Acts prohibited on Sunday.

SECTION 7814. CERTAIN ACTS PROHIBITED ON SUNDAY; PUNISHMENT. Any person who compels his child, apprentice, or servant to perform any labor on Sunday, except the customary domestic duties of daily necessity or comfort, or works of charity; or who engages in shooting, hunting, gaming, card-playing, domino-playing, or racing on that day; or who, being a merchant or shop-keeper, druggist excepted, keeps open store on that day, must, for the first offense, be fined not less than ten nor more than twenty dollars, and, for the second, or any subsequent offense, must be fined not less than twenty nor more than one hundred dollars, and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more

Penalty.

[1] In these Sunday laws, as in the State Constitutions, the marks of ellipsis are not inserted when irrelevant sections are omitted, the numbering of the sections sufficiently indicating such omission; but when any part of a section is omitted, the ellipsis is inserted. Sections declaring Sunday to be a *dies non*, or that legal papers shall not be served on that day, are usually omitted, as Sunday is by common law a *dies non juridicus*. The custom of not legislating or holding court on that day or doing any judicial business, is also practically universal in this country even in the absence of any special legislation.

Style adopted.

The incongruity of Sunday laws with the American principles of absolute equality and entire separation of the state from the church is often ridiculous, and has already proved a fruitful subject for the satirist. As, in Georgia, "indecent bathing" is prohibited only *on Sunday;* hence, we must presume, it is allowed on other days! In Vermont, any person who "visits from house to house, except from motives of humanity or charity, or for moral or religious edification," is to be fined! One person cannot even take dinner with another without violating the law! Nevertheless, the judiciary of this country are endeavoring to uphold the constitutionality of these Sunday laws on the ground that they are civil, not religious. The judiciary will render a decision against a young man because he takes a lady of his choice out riding on Sunday, as was done by a New England court, and then with a mock solemnity proceed to assert that the Sunday laws of this country "rest entirely upon a civil basis." If the dark ages had only been possessed of some modern American judges, they might have disposed of their fifty million or more of martyrs on an "entirely civil basis," and thus avoided the ignominy that is necessarily attached to religious persecution.

Sunday laws ridiculous.

Illustrations of absurdities.

An apt illustration of the distinction between the civil and religious Sabbath is given by the Rev. Byron Sunderland in the New York "Evangelist:"

"The distinction forcibly reminds me of a certain lord-bishop who said,

"'Oh, but you know, John, I don't swear as a *bishop*, only as a *man*.'

"'That is true, your Grace,' replied the valet, 'but I was thinking that when the devil comes after the *man*, what would become of the *bishop*.'"

A marked difference!

Take the religious idea away from the day, and how ridiculously absurd these laws appear; — to illustrate: supply "Tuesday" whenever "Sunday" or its equivalents occurs.

A sure test.

Exceptions.

than three months; but the provisions of this section do not apply to the running of railroads, stages, or steamboats, or other vessels navigating the waters of this State, or any manufacturing establishment which requires to be kept in constant operation.

Liquor selling.

SECTION 7815. SALE OF LIQUOR ON SUNDAY PROHIBITED. Any person who shall on Sunday keep open a barroom or other place for the sale of spirituous, vinous, or malt liquor; or any dealer in spirituous, vinous, or malt liquors who shall, on Sunday, sell or otherwise dispose of such liquors, or any of them, must, upon conviction, be fined not less than twenty nor more than one hundred dollars; and may also be imprisoned in the county jail, or sentenced to hard labor for the county, for not more than three months. And any person who is convicted under this statute, or before any mayor, recorder, or judge of a police court, or any judge of a municipality, shall forfeit his license, and be debarred from conducting for himself or another the business of a dealer in spirituous, vinous, or malt liquor for the period of two years after such conviction.

Baseball.

SECTION 7818. BASEBALL AND OTHER GAMES NOT PLAYED ON SUNDAY. Any person or persons who play or engage in the playing of any baseball, or football, tennis, or golf on Sunday in any public place or places where people resort for such purpose, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars nor more than fifty dollars.

SECTION 7819. HOLDING PUBLIC MARKETS AND TRADING THEREIN ON SUNDAY. Any person who opens, or causes to be opened, for the purpose of selling or trading, any public markethouse or place on Sunday, or opens, or causes to be opened, any stall or shop therein, or connected therewith, or brings anything for sale or barter to such market or place, or offers the same for sale therein on that day, or buys or sells therein on that day (including live stock or cattle), must, on conviction, be punished as prescribed in the fifth preceding section. Any place where people assemble for the purchase and sale of goods, wares, and merchandise, provisions, cattle, or other articles, is a markethouse or place, within the meaning of this section.

Attachments.

SECTION 2938. ATTACHMENTS WHEN ISSUED AND EXECUTED ON SUNDAY. Attachments may issue and be executed on Sunday, if the plaintiff, his agent or attorney, in addition to the oath prescribed for the issue of such process, make affidavit that the defendant is absconding, or is about to abscond, or is about to remove his property from the State, and gives the bond required in this article.

Contracts void.

SECTION 3346. CONTRACTS MADE ON SUNDAY. All contracts made on Sunday, unless for the advancement of religion, or in the execution or for the performance of some work of charity, or in case of necessity, or contracts for carrying passengers or perishable freight,

or transmissions of telegrams, or for the performance of any duty authorized or required by law to be done on Sunday, are void.

Holidays.

SECTION 5144. Holidays: Sunday, Christmas [New Year's, Robert E. Lee's birthday, January 19, Washington's birthday, February 22, Jefferson's birthday, April 13, Jefferson Davis' birthday, June 3, Fourth of July, first Monday in September, and Thanksgiving] shall each be deemed a holiday. If Christmas day [or any of the above holidays] falls on Sunday, the Monday following is the holiday.

ARIZONA.

No Sunday law in Arizona.

[No Sunday law.]

ARKANSAS.

[Mansfield's Digest of the Statutes of Arkansas, 1904.]

Acts prohibited on Sunday.

SECTION 2030. SABBATH-BREAKING. Every person who shall, on the Sabbath or Sunday, be found laboring, or shall compel his apprentice or servant to labor, or to perform other services than customary household duties of daily necessity, comfort, or charity, on conviction thereof shall be fined one dollar for each separate offense.

SECTION 2031. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

Exceptions.

SECTION 2032. The provisions of this act shall not apply to steamboats and other vessels navigating the waters of the State, nor to such manufacturing establishments as require to be kept in continual operation.

Sabbatarians exempted.

SECTION 2033. No person who from religious beliefs keeps any other day than the first day of the week as the Sabbath shall be required to observe the first day of the week, usually called the Christian Sabbath, and shall not be liable to the penalties enacted against Sabbath-breaking; *Provided,* no store or saloon shall be kept open or business carried on there on the Christian Sabbath; and provided further, no person so observing any other day shall disturb any religious congregation by his avocations or employments.[1]

Merchandizing prohibited.

SECTION 2034. Every person who shall, on Sunday, keep open any store or retail any goods, wares, and merchandise, or keep open any dram-shop or grocery, or who shall keep the doors of the same so as to afford ingress or egress, or retail or sell any spirits or wine, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

Injustice of Sunday laws.

[1] For the speech of Senator Crockett on the adoption of this exemption clause, in 1887, see *ante* page 354. Senator Crockett declared that under the Arkansas Sunday law "such ill deeds and foul oppressions have been perpetrated upon an inoffensive class of free American citizens in Arkansas, for conscience' sake, as should mantle the cheek of every lover of his State and country with indignant shame."

SECTION 2035. Charity or necessity on the part of the customer may be shown in justification of the violation of the last preceding section.

[Revised Statutes, chapter 44, division 7, article 2.]

Horse racing prohibited.

SECTION 2036. Every person who shall, on the Christian Sabbath, or Sunday, be engaged in the running of any single horse, for any bet or wager on the speed of such horse, or for pastime, or for amusement, without any bet or wager, or shall be engaged in any cock fight, on any bet or wager, or for pastime, without bet or wager, shall, on conviction thereof, be fined in any sum not exceeding one hundred dollars, nor less than twenty dollars.

[Act of January 12, 1853.]

Card-playing prohibited.

SECTION 2037. Every person who shall, on the Christian Sabbath or Sunday, be engaged in any game of brag, bluff, poker, seven-up, three-up, twenty-one, vingtun, thirteen cards, the odd trick, forty-five whist, or at any other game at cards known by any name now known to the laws, or with any other new name, for any bet or wager on such games, or for amusement, without any bet or wager, shall, on conviction thereof, be fined in any sum not less than twenty-five dollars, nor more than fifty dollars.

[Act of January 19, 1855.]

Hunting prohibited.

SECTION 2038. If any person shall be found hunting with a gun, with intent to kill game, or shooting for amusement on the Sabbath day, on conviction thereof he shall be fined in any sum not less than five nor more than twenty-five dollars for each separate offense.

[Act 18, section 2.]

Offenses of minors.

SECTION 2039. If such offense should be committed by a minor, under the age of twenty-one years, and it shall be made to appear that the offense was committed by or with the consent or approbation of the parent or guardian of said minor, then such parent or guardian, as aforesaid, shall also be fined according to the provisions of section 2038.

[Act of November 5, 1875, section 4.]

Horse-racing prohibited.

SECTION 2040. If any person shall be engaged in running a horse-race on the day known as the Christian Sabbath, or Sunday, on a bet or wager, or for sport or pastime, with or without such bet or wager, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined in any sum not less than twenty-five nor more than one hundred dollars.

Baseball-playing prohibited.

SECTION 2041. It shall be unlawful for any club, person, or persons, to engage in any game or play of baseball in this State on the Christian Sabbath, or Sunday.

Penalty.

SECTION 2042. All persons violating the preceding section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten dollars nor more than twenty dollars in each case.

CALIFORNIA.

No Sunday law in California.

[No Sunday law.][1]

[Statutes 1893, page 54; Henning's General Laws of California, 1905, page 351, 352.]

Day of Rest.

TO PROVIDE FOR A DAY OF REST FROM LABOR.

Approved Feb. 27, 1893.

Section 1. Every person employed in any occupation of labor shall be entitled to one day's rest therefrom in seven; and it shall be unlawful for any employer of labor to cause his employees, or any of them, to work more than six days in seven; *Provided, however,* that the provisions of this section shall not apply to any case of emergency.

Section 2. For the purposes of this act, the term day's rest shall mean and apply to all cases, whether the employee is engaged by the day, week, month, or year, and whether the work performed is done in the day or nighttime.

Section 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor.

Section 4. This act shall take effect and be in force thirty days from and after its passage.

Campaign of 1882.

[1] In 1882 the question of the repeal of the Sunday law was made the issue of the State political campaign of that year. In 1858 the State Sunday law had been declared unconstitutional by the Supreme Court of the State; but in 1861 a new law was enacted which was upheld by the new court, of which Stephen J. Field, a strong supporter of Sunday laws, had become Chief Justice; and the former decision, to which Justice Field had dissented, was overruled. But few prosecutions, however, were made under this law until the year 1882, when, under the pressure of a fanatical move on the part of the church element, so many arrests were made that the proceedings of the courts were clogged, and the law made obnoxious. Among those arrested was one of the most prominent Sabbatarians of the country, the manager of the Pacific Press Publishing House, the largest publishing house on the Pacific Coast. In this campaign Sunday legislation was discussed by the press in all its bearings. The question probably had never before been so well understood by the people. As a consequence, the law, on the recommendation of the Governor, was immediately repealed by the next Legislature, February 8, 1883. See *ante* page 350. The Legislature itself, backed by a State-wide political landslide of over forty-one thousand votes over the question, thus set aside the law which the Supreme Court of the State had so strenuously defended and upheld in 1861 as "essential to the welfare of the people;" since which time California has had no Sunday law.

The law repealed.

A rest-day law secured.

Ten years later, however (1893), the church people succeeded in securing a one-day-in-seven rest law — all they dared to ask for at the time. The requirements being so mild, this went through without opposition; but, like the Sunday law it stood in lieu of, it has proved a dead letter. While providing for one day of rest in seven for laboring men,— all the advocates of "civil sabbath" laws claim they desire to secure by such legislation,— this law does not satisfy this element. What they desire is a *Sunday* law; and hence, during recent years, most determined efforts have been made to secure not only a State Sunday law in California, but a Sunday-law amendment to the State Constitution, and thus bring California into line with the other States having such laws, and make Sunday laws there constitutional.

A Sunday law wanted.

COLORADO.

[Revised Statutes of Colorado, 1908.]

Disturbing peace on Sunday.

SECTION 1838. DISTURBING PEACE ON SUNDAY — PENALTY. Any person who shall hereafter knowingly disturb the peace and good order of society, by labor or amusement on the first day of the week, commonly called Sunday (works of necessity and charity excepted),

That religious sentiment and compulsory conformity in matters of religion, and not a burden for the laboring man, are the underlying motives in this campaign is evident from the following remarks, in behalf of a Sunday law, made by Rev. Dr. W. H. G. Temple before a committee of legislators at Sacramento, January 17, 1909, as reported in the Sacramento "Bee" of January 18, 1909. He said:

"It has been recognized for ages that men must have one day of rest. We do not stop harmless amusements. We ask for a day of rest. This is a Christian nation, founded on prayer. We are not Mohammedans, nor Jews, nor Buddhists. We offer religious freedom to all, but we have a right to demand that the alien in religion shall conform outwardly to our customs. When one branch of the Christian church, so small it is insignificant, takes another day for its Sunday, *we have a right to make that sect conform to our practice.*"

Will force non-conforming sects to conform.

Let the reader ponder this, and say whether there is any religion, or sectarianism, or religious oppression connected with this Sunday-law movement, and conjecture what may be expected should this element secure the laws it desires and get control of the civil power.

Effort to cover up religious character of movement.

How the religious character of the movement to secure a Sunday law in this State is sought to be covered up, is well illustrated by the following remarks of Dr. G. L. Tufts, ex-Pacific Coast secretary of the International Reform Bureau, of Washington, D. C., and leader in this crusade, made before a ministers' meeting in a northern California city, in September, 1909:

The plan.

"We believe that the world is in need of many reforms, of which Sunday legislation is one. We have pursued the following plan in the cities which we have visited: We call upon the local ministers and ask them to select a committee of ten or fifteen, this committee selecting a large committee consisting of from one to two hundred. The large committee is to co-operate with the National Reformers in securing such reform as they may suggest. *We would not have the ministers lead out in such movements, as the public would recognize at once the ministerial aspect, and the object for which we are laboring would be defeated.* We have had many such experiences as this in the past.

Ministers keep in background.

"We would advise that in selecting this large committee you should secure strong men from the business leaders — men of means, not necessarily members of any church. Also we would recommend that you select, or have the priest select, from the Catholic Church strong men, and if possible secure the co-operation of the priest in such movements.

"*In all such maneuvers, let the ministry remain behind and push* — everlastingly push — these measures, *but be never in the lead.*

Keep back Sunday movement.

"*I would not recommend that you take up the Sunday movement first.* I see you have a number of slot machines in your city. That would be a good object to organize your forces upon, *one to which no good citizen could have any objection.* Later on, any other reform that you might deem necessary could be inaugurated.

"After that, we would recommend that you take up the closing of saloons at midnight, then Sunday closing of saloons; and at our next Legislature send us strong men to Sacramento, and we will not be defeated as we were last winter. Our defeat last winter was due to the lack of organization. I expect to visit every city in California, and organize it as I have this one; and when we come up to the time of the Legislature, we will secure the Sunday amendment to the Constitution without a question." "Pacific Union Recorder," September 30, 1909.

shall be fined, on conviction thereof, in any sum not exceeding fifty dollars.

SECTION 1839. DISTURBING FAMILY, CONGREGATION, PROCESSION, ON SUNDAY — PENALTY. Whoever shall be guilty of any noise, rout, or amusement on the first day of the week, called Sunday, whereby the peace of any private family may be disturbed, or who shall, by a disorderly or immoral conduct, interrupt or disturb the meeting, processions, or ceremonies of any religious denomination, on either a Sunday or week day, such person so offending shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars.

Other disturbances on Sunday.

SECTION 4000. THEATERS, CIRCUSES, ETC., INCLUDED — SUNDAY — FINE. This chapter shall extend to and include all theaters, circuses, and shows where an admission fee is charged for entrance thereto. No person shall be allowed by virtue of any such license to open any place of public amusement, such as a theater, circus, or show, on the Sabbath, or Lord's day; but any person who shall so offend on such day shall be fined in a sum not less than fifty nor more than one hundred dollars, for every such offense.[1]

Sunday theaters, etc, prohibited.

SECTION 1776. OPEN LEWDNESS — KEEPING LEWD HOUSE — PENALTY. If any person shall be guilty of open lewdness, or other notorious act of public indecency, tending to debauch the public morals, or shall keep open any tippling or gaming house on the Sabbath day or night, or shall maintain or keep a lewd house or place for the practice of fornication, or shall keep a common, ill-governed, and disorderly house, to the encouragement of idleness, gaming, drinking, fornication, or other misbehavior, every such person shall, on conviction, be fined not exceeding one hundred dollars, or imprisoned in the county jail not exceeding six months.

Sunday gaming-houses, etc., prohibited.

SECTION 1844. SUNDAY BARBERING A MISDEMEANOR. That it shall be a misdemeanor for any person to carry on the business of barbering on Sunday in any city of the first or second class, whether incorporated by general law or special charter, in the State of Colorado.

Barbering.

SECTION 1845. PENALTY FOR SUNDAY BARBERING. Any one found guilty of violating the first section of this act, shall be fined not less than twenty-five dollars, nor more than fifty dollars, or imprisoned in the county jail not less than fifteen nor more than thirty days, or both, in the discretion of the court.

Penalty.

SECTION 4657. SUNDAY AND HOLIDAY. Where the day, or the last day, for doing an act herein required or permitted to be done, falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

[1] On the right of prohibiting Sunday pastimes, see note from Mr. John Stuart Mill, *ante* page 428. He says that the only ground on which such restrictions "can be defended must be that they are religiously wrong, a motive of legislation which can never be too earnestly protested against."

Danger of Sunday legislation.

Saloons.

SECTION 1805. SALOONS — MIDNIGHT AND SUNDAY CLOSING. Every saloon, bar, or other place where spirituous, vinous, malt, or other liquors are kept, sold, bartered, exchanged and given away, shall be closed and kept closed from twelve o'clock at midnight until six o'clock in the morning of every day in the week, except Sunday or the first day of the week, and on Sunday or the first day of the week as aforesaid the said places hereinbefore in this section mentioned shall be closed at twelve o'clock at midnight on Saturday of each and every week and kept closed until six o'clock in the morning of the following Monday of each and every week; that during the time and times herein specified in which the said saloons, bars and other places are to be kept closed, no liquor of any kind whatsoever shall be sold, bartered, exchanged or given away, and no person or persons whomsoever, other than those connected with the business of carrying on or keeping the said saloons, bar or other place or places as aforesaid, shall be permitted to be or remain in or around the same, but all and every such person or persons shall be expelled and put out of the same. Any and every person convicted of violating any of the provisions of this section shall be punished by a fine of not less than one hundred nor more than five hundred dollars or imprisoned not less than six months nor more than eighteen months or by both such fine and imprisonment at the discretion of the court; and if it shall appear that a person or persons not employed in and about the business as aforesaid, shall be permitted to remain in the said saloon or other place or places as aforesaid, such facts shall be *prima facie* evidence in favor of the guilt of the accused party or parties.

CONNECTICUT.

[General Statutes of Connecticut, 1902.]

Secular business, labor, and sports prohibited.

SECTION 1369. WORK OR RECREATION ON SUNDAY. Every person who shall do any secular business or labor, except works of necessity or mercy, or keep open any shop, warehouse, or any manufacturing or mechanical establishment, or expose any property for sale, or engage in any sport between twelve o'clock Saturday night and twelve o'clock Sunday night, shall be fined not more than fifty dollars. The provisions of this section shall not affect the issue or service of any criminal complaint or any proceedings thereon, nor the performance by haywards of their duties, nor the issue or service of complaints for injunctions and orders thereon, nor the issue or service of any other civil process, except between sunrise and sunset on Sunday.

Public diversions prohibited.

SECTION 1370. SUNDAY CONCERTS. Every person who shall be present at any concert of music, dancing, or other public diversion on Sunday, or on the evening thereof, shall be fined not more than four dollars.

SECTION 1371. PROSECUTIONS. Prosecutions for violation of any provision of section 1369 to 1370 shall be brought within one month after the commission of the offense. Prosecution.

[Public Acts of Connecticut, 1907, chapter 189.]

SECTION 1. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, or who conscientiously believes that the Sabbath begins at sundown on Friday night and ends at sundown on Saturday night, and actually refrains from secular business and labor during said period, and who has filed written notice of such belief with the prosecuting attorney of the court having jurisdiction, shall be liable to prosecution for performing secular business and labor on Sunday, provided he disturbs no other person who is attending public worship. Approved June 29, 1907. Sabbath-keepers exempt.

SECTION 584. PROCESS VOID IF SERVED ON SUNDAY. All civil process, except complaints for injunctions and orders thereon, issued or served between sunrise and sunset on Sunday, shall be void. Legal processes.

SECTION 764. SUNDAY CONTRACT; RETURN OF CONSIDERATION. No person who receives a valuable consideration for a contract, express or implied, made on Sunday, shall defend any action upon such contract on the ground that it was so made, until he restores such consideration.[1] Contracts.

SECTION 3132. No person shall, on Sunday, shoot or hunt; and the possession in the open air, on Sunday, of any implement for hunting shall be deemed *prima facie* evidence of hunting in violation of the provisions of this act. Approved June 27, 1907.

SECTION 3134. PENALTY. Every person who shall violate any of the foregoing provisions of this chapter shall be punished by a fine of not less than ten dollars nor more than fifty dollars, and by an additional fine of ten dollars for each bird or part of bird taken or possessed in violation thereof. Fine.

SECTION 3300. FAIRFIELD BEACH CLAMS. Every person who shall take more than one peck of clams at any one tide on Fairfield beach Clam taking.

[1] For a discussion of the subject of Sunday contracts, see the dissent of Judge Caldwell, *ante* pages 412, 413; also note from Judge Thurman, *ante* page 421. The state has no more right to void a paper made on Sunday than to void a paper made on Tuesday or any other day of the week. As evident as is the religious phase of these Sunday statutes, the State Legislatures still cling to them with all the tenacity characteristic of church and state governments. Every movement for the freedom of the individual, every movement that encourages individuality and lessens the power of the government over the minds and actions of its subjects, has been successful only after a long and severe contest with the dominant church, with established custom, and with superstitious laws. It was only by indomitable will and indefatigable energy that Jefferson and Madison and their co-laborers succeeded in establishing the principles of entire separation of church and state in our national political system; but men with like will and energy seem not yet to have risen to establish the same principles in their entirety at least in the political systems of the States. Sunday contracts. Injustice of invalidating them. Opposition to separation of church and state.

between White Ash creek and Pine creek, so called, in the town of Fairfield, or on the bar extending from said beach to Pennfield reef, so called, or on the flats adjacent to said beach, or said bar, on any week day, or who shall take or dig clams on any of said places on Sunday, shall be fined not less than ten nor more than fifty dollars, or be imprisoned not more than thirty days, or both.

SECTION 3179. SUNDAY SHAD FISHING PROHIBITED; SIZE OF MESH. No person shall use or assist in using, in any of the waters of this State, any seine, drag, gill, or other net between sunset on Saturday evening and sunset on the following Sunday evening, prior to June 20, or shall at any time use or assist in using any seine, drag, gill, or other net for catching shad with a mesh less than two and one-half inches square; *Provided*, that this section shall not apply to the raising and use of leaders in the waters of Long Island and Fisher's Island sounds.

Shad fishing.

SECTION 2703. SELLING LIQUOR OR KEEPING OPEN ON SUNDAY. Every person who by himself, his servant, or his agent, between the hours of twelve o'clock on Saturday night and twelve o'clock on Sunday night next following, shall sell or expose for sale any spirituous or intoxicating liquors, or shall keep open any place of any kind or description in which spirituous and intoxicating liquors are at any time sold or exposed for sale, or are reputed to be sold or exposed for sale, or in which any sports or games of chance are at any time carried on or allowed, or are reputed to be carried on or allowed, shall be subject to the penalties of section 2712; but this section shall not apply to sales under a druggist's license.

Intoxicants.

SECTION 2712. PENALTIES FOR VIOLATION OF LIQUOR LAW. Every person convicted of a first violation of any of the provisions of the laws relating to the sale of spirituous and intoxicating liquors shall be fined not less than ten nor more than two hundred dollars; on every subsequent conviction such person shall be fined as aforesaid, or imprisoned not less than ten days nor more than six months, or both.

Penalty.

SECTION 3749. SUNDAY TRAINS RESTRICTED. No railroad company shall run any trains on any road operated by it within this State, between sunrise and sunset on Sunday, except from necessity or mercy; *Provided*, that it may run trains carrying the United States mail, and such other trains or classes of trains as may be authorized by the railroad commissioners, on application made to them on the ground that the same are required by public necessity, or for the preservation of freight.

Railroading.

SECTION 3750. FREIGHT NOT TO BE HANDLED ON SUNDAY — EXCEPTIONS. No such company shall permit the handling, loading, or unloading of freight on any road operated by it, or at any of its stations within this State, between sunrise and sunset on Sunday, except from necessity or mercy; *Provided*, that the commissioners

Freight.

may suspend the operations of this section, so as to permit the handling, loading, or unloading of freight by transfer of said freight between steamboats and cars, until eight o'clock in the forenoon, at any depot or station where, upon application made to them, they shall find that the same is required by public necessity or for the preservation of freight.

Forfeit.

SECTION 3751. PENALTY. Every such company which shall violate any provision of section 3749 or 3750 shall forfeit to the State the sum of two hundred and fifty dollars for each violation.

SECTION 3752. FARES ON SUNDAY TRAINS — FORFEITURE. No such company shall transport passengers on Sunday, upon any train deemed necessary according to the intent of section 3749, for less than the regular fares collected on week days; *Provided*, that commutation, season, and mileage tickets may be used on Sunday. No such company shall issue or accept for any travel on said day excursion or other special bargain tickets. Every company which shall violate any provision of this section shall forfeit to the State fifty dollars for each violation.

Violations — forfeits.

SECTION 3753. EFFECT OF PRECEDING SECTIONS. The provisions of sections 3749, 3750, 3751, and 3752 shall not affect statutes which prohibit secular work or recreation on Sunday, except in so far as said provisions may be found in their operation to be inconsistent with said statutes.

Exceptions.

DELAWARE.

[Revised Statutes of the State of Delaware, as Amended 1893, chapter 131, page 952.]

Worldly labor prohibited on Sunday.

SECTION 4. If any person shall perform any worldly employment, labor, or business on the Sabbath day (works of necessity and charity excepted), he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned not exceeding twenty-four hours.

If any carrier, peddler, wagoner, or driver of any public stage or carriage, or any carter, butcher, or drover, with his horse, pack, wagon, stage, carriage, cart, or drove, shall travel or drive upon the Sabbath day; or if any retailer of goods shall expose the same to sale on the Sabbath; he shall be fined eight dollars, and on failure to pay such fine and costs, shall be imprisoned not exceeding twenty-four hours.

Any justice of the peace may stop any such person so traveling on the Sabbath, and detain him until the next day.

If any person shall be guilty of fishing, fowling, horse-racing, cock fighting, or hunting game on the Sabbath day, he shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid.

Amusements prohibited.

If any number of persons shall assemble to game, play, or dance on the Sabbath day, and shall engage, or assist in such game, play, or

dance, every such person shall be fined four dollars, and on failure to pay such fine and costs, shall be imprisoned as aforesaid.

Any justice of the peace of the county shall have jurisdiction and cognizance of the offenses mentioned in this section.

DISTRICT OF COLUMBIA.

No general Sunday law.

[No general Sunday law.] [1]

[Abert's "Compiled Statutes in Force in the District of Columbia," 1889, pages 176, 239, 342, 372.]

Law obsolete.

CHAPTER 16, SECTION 107. [Law prohibiting labor on Sunday under penalty of two hundred pounds of tobacco. Set aside by District Court of Appeals, January 14, 1908.] [2]

BARBER SHOPS.

Corporation Law of 1869

[Laws of the Corporation of the City of Washington passed by the Sixty-seventh Council, chapter 1, page 9. Act approved September 17, 1869.]

Barbering on Sunday prohibited.

It shall be unlawful for any person or persons to open or allow to be opened any barber shops or place where such business is done on Sunday; any person or persons who shall violate this law shall be liable to a fine of twenty dollars, the informer to receive half of said fine.

Act of Congress approved March 3, 1899.

TO PREVENT THE SALE OF INTOXICATING LIQUORS ON SUNDAY IN THE DISTRICT OF COLUMBIA.

[Excise law of the District of Columbia, page 9. United States Statutes at Large, volume 30, pages 1013, 1014.]

Liquor not to be sold on Sunday.

It shall be unlawful for any maker, brewer, or distiller of beer or other intoxicating liquors in the District of Columbia, or other person or corporation, or the agent or servant of such maker, brewer, or

Sources of District Sunday laws.

[1] The original sources of such Sunday laws as have been in force in the District of Columbia until recent years, are the laws of the State of Maryland in force in 1801, in the territory now comprising the District, when this was taken over as the permanent seat of the national government, and such laws as were made by the municipal authorities and legislative council of the cities of Washington and Georgetown prior to 1878, when Congress became the direct legislative body for the District. Codes compiled from these sources have from time to time been authorized by acts of Congress, and one or two minor acts, or amendments of old laws, involving Sunday enforcement to a degree, have been passed by Congress since 1897.

Ancient Sunday law set aside by Court of Appeals.

[2] This is the old Maryland Sunday law of 1723, prohibiting "any manner of work or labor on the Lord's day" except works of necessity and charity, which was incorporated in the laws of the District by act of Congress in 1801. By the District Court of Appeals, in a decision rendered January 21, 1908, it was declared an "outgrowth of the system of religious intolerance that prevailed in many of the colonies," and set aside as "obsolete" and "repealed by implication." See *ante* pages 46 and 514. Section 1 of this same act of Maryland, of which this Sunday law is section 10, is a law for the punishment of blasphemers by death, and likewise still appears on the statute books of the District. See "Laws of the District of Columbia," 1868, page 136, and notes on *ante* pages 46, 398, 518.

distiller, or the agent or servant of any maker, brewer, or distiller of beer or other intoxicating liquors outside of said District, or other person or corporation, to sell or deliver any beer or other intoxicating liquors in the District of Columbia on the first day of the week, commonly called Sunday.

SECTION 2. Any person violating the provisions of this act shall on conviction thereof in the police court on a prosecution in the name of the District of Columbia be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each and every offense. Fine.

[United States Statutes at Large, volume 29, page 595, and volume 30, page 1013.]

AN ACT TO LICENSE BILLIARD AND POOL TABLES.

Act of Congress approved Feb. 25, 1897

SECTION 4. That it shall not be lawful for the proprietors of billiard tables, pool tables, bagatelle tables, Jenny Lind tables, or other tables of the kind mentioned in the first section of this Act, shuffleboards and bowling alleys, kept for public hire and gain in the District of Columbia, to sell or to allow to be sold in the same room, spirituous, vinous, or malt liquors, and all such places shall be closed during the entire twenty-four hours of each and every Sunday, and also during the hours that barrooms are required to be closed. Places of sport to be closed on Sunday.

AN ACT FOR THE PROTECTION OF BIRDS, PRESERVATION OF GAME, ETC.

Act of Congress approved March 3, 1899.

SECTION. 7. That there shall be no shooting, or having in possession in the open air the implements for shooting, on the first day of the week, called Sunday, except to transport said implements within or without the District of Columbia; and any person violating the provisions of this section shall be liable to a penalty of not more than twenty dollars for each offense. (Same as Abert's Code, chap. 24, sec. 17, with slight modification.) No shooting on Sunday.

[Police Regulations of the District of Columbia, as amended to June 30, 1910, page 94.]

ARTICLE 16. PLACES OF PUBLIC ASSEMBLY.

SECTION 16. No owner, proprietor, lessee, tenant, or other person shall on the first day of the week, commonly called Sunday, in any theater or other public place of amusement permit, allow, or take part in any manner in any public exhibition of any entertainment, play, opera, circus, animals, gymnastics, game, dance or dances, or vaudeville performance of any kind, except the exhibition of moving or other pictures, vocal or instrumental concerts, or singing by singer or singers, artist or artists not in character costume, lecture and speches; *Provided,* That nothing herein contained shall be held or construed to change, abrogate, or annul the regulations in force for the protection of the public decency, all of which shall be applicable to the performances allowed under the terms of this regulation. No theatricals, operas, plays, games, or dances on Sunday.

FLORIDA.

[General Statutes of Florida, 1906.]

Violations.

SECTION 3565. Whoever follows any pursuit, business or trade on Sunday, either by manual labor or with animal or mechanical power, except the same be work of necessity, shall be punished by a fine not exceeding fifty dollars: *Provided, however,* that nothing contained in the laws of Florida shall be so construed as to prohibit the preparation of printing between the hours of midnight Saturday and six in the morning, Sunday, of any newspaper intended to be circulated and sold on Sunday, or to prohibit the circulation and sale on Sunday of same, or to prohibit the circulation and sale on Sunday of any newspaper theretofore printed.

Sunday newspapers excepted.

SECTION 3566. Whoever keeps open store or disposes of any wares, merchandise, goods or chattels on Sunday, or sells or barters the same, shall be punished by a fine not exceeding fifty dollars. In cases of emergency or necessity, however, merchants, shop-keepers, and others may dispose of the comforts and necessities of life to customers without keeping open doors.

Fine.

Exceptions.

SECTION 3567. Whoever employs his apprentice or servant in labor or other business on Sunday, except it be in the ordinary household business of daily necessity, or other work of necessity or charity, shall be punished by a fine not exceeding ten dollars for every such offense.

Penalty.

Hunting.

SECTION 3568. Whoever uses firearms by hunting game or firing at targets upon Sunday shall be punished by imprisonment not exceeding twenty days, or by fine not exceeding twenty-five dollars.

SECTION 450. No license issued under the provisions of this act shall allow the holder thereof to sell such liquors as are described in this chapter between the hours of twelve o'clock Saturday night and twelve o'clock Sunday night, and the collector issuing any license under this chapter shall have written upon its face in red ink the words, "This license does not allow the holder to sell liquors between the hours of twelve o'clock Saturday night and twelve o'clock Sunday night," and if the holder sells liquors at times in which this chapter prohibits the selling of the same, he shall be deemed guilty of selling liquor without a license.

Liquor selling.

SECTION 451. If any door of any place where such liquors, wines, or beer are sold, be opened on Sunday, or if any person go into such place on Sunday, it shall be *prima facie* evidence of the sale of such liquors.

Open doors.

SECTION 3421. Whoever is discovered in the act of willfully injuring any fruit or forest trees, or committing any kind of malicious mischief on Sunday, may be arrested by any sheriff, deputy sheriff, constable, watchman, police officer, or other person, and lawfully detained by imprisonment in the jail or otherwise until a com-

Malicious mischief.

plaint can be made against him for the offense for which he was arrested, and he be taken upon a warrant issued upon such complaint, but such detention without warrant shall not continue more than twenty-four hours.[1]

Sunday in prisons.

SECTION 4118. The Board of Commissioners of State institutions shall adopt such regulations as they may deem proper, governing the admission of books and newspapers within the prison, for the use of prisoners, and for the proper observance of Sunday within the prison, and for the instruction of the prisoners in their moral and religious duties.

[Appendix, chapter 5436.]

Games, sports.

SECTION 1. Whoever engages on Sunday in any game or sport, such as baseball, football or bowling, as played in bowling alleys, or horse-racing, whether as player, manager, director, or otherwise, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding three months, or by both such fine and imprisonment.

GEORGIA.

[Code of the State of Georgia, 1901, volume iii.]

Lewdness and tippling-houses.

SECTION 390. LEWDNESS AND TIPPLING-HOUSES. Any person who shall be guilty of open lewdness, or any notorious act of public indecency, tending to debauch the morals, or of keeping open tippling-houses on the Sabbath day, or Sabbath night, shall be guilty of a misdemeanor.

Freight trains.

SECTION 420. RUNNING FREIGHT TRAINS ON THE SABBATH. If any freight train, excursion train or other train than the regular trains run for the carrying of the mails or passengers, shall be run on any railroad on the Sabbath day, the superintendent of transportation of such railroad company, or the officer having charge of the business of that department of the railroad, shall be liable to indictment in each county through which such train shall pass, and shall be punished as for a misdemeanor.

The foregoing provisions shall not extend to —

Exceptions.

1. A train which has one or more cars loaded with live stock, and which is delayed beyond schedule time. Such trains shall not be required to lay over on the line of road during Sunday, but may run on through to the point where, by due course of shipment or consignment, the next stock pen on the route may be, where such animals may be fed and watered, according to the facilities usually afforded for such transportation.

[1] As much as to say that if these things were done on any other day than Sunday they would be considered perfectly legitimate and right! Otherwise, why specify Sunday? What has the day to do with the character of the deed?

2. A freight train running over a road on Saturday night, if the time of its arrival at destination according to the schedule by which it started on the trip be not later than eight o'clock Sunday morning.

3. Special fruit, melon and vegetable trains, the cars of which contain no other freight except perishable fruits, melons, vegetables, fresh fish, oysters, fresh meats, live stock, and other perishable goods, of a like character, and which trains shall be loaded and leave the station from which they start in this State before the hour of midnight on Saturday night previous to the Sunday on which they are operated. No company shall be compelled to run the trains mentioned in this paragraph, and all freight trains or cars thus loaded and coming into this State may run to any point of destination in this State or continue their run through the State on Sunday.

Sabbath violations.

SECTION 422. VIOLATING THE SABBATH DAY. Any person who shall pursue his business, or the work of his ordinary calling, on the Lord's day, works of necessity or charity only excepted, shall be guilty of a misdemeanor.

Hunting.

SECTION 423. HUNTING ON SUNDAY. Any person who shall hunt any kind of game with gun or dogs, or both, on the Sabbath day, shall be guilty of a misdemeanor.

Indecency.

SECTION 424. INDECENT BATHING. Any person who shall bathe in a stream or pond of water on the Sabbath day, in view of a road or pass way, leading to or from a house of religious worship, shall be guilty of a misdemeanor.

Disturbing Sunday-schools.

SECTION 427. INTERFERING WITH SCHOOLS. Any person who shall willfully interrupt or disturb any public school, private school, or Sunday-school, or any assemblage, or meeting, or any such school, lawfully and peaceably held for the purpose of scientific, literary, social, or religious improvement, either within or without the place where such school is usually held, shall be guilty of a misdemeanor.

Liquor at Sunday-schools.

SECTION 436. CARRYING LIQUOR TO SUNDAY OR DAY SCHOOLS. Any person who shall carry intoxicating liquor, except for medicinal purposes, to any place where people are assembled for Sunday-school, or for a Sunday-school celebration, or day-school celebration, shall be guilty of a misdemeanor.

Chain-gang.

SECTION 1039. MISDEMEANORS; HOW PUNISHED.[1] Every crime declared to be a misdemeanor is punishable by a fine not to exceed one thousand dollars, imprisonment not to exceed six months, to work in the chain-gang on the public works or on such other works as the county authorities may employ the chain-gang, not to exceed twelve months, and any one or more of these punishments may be ordered in the discretion of the judge; *Provided*, that nothing herein contained shall authorize the giving the control of convicts to private

[1] This and the six following sections show how misdemeanors may be punished in the State of Georgia, and thereby how conscientious Christians, who observe another day than Sunday, might be made to suffer under these laws.

persons, or their employment by the county authorities in such mechanical pursuits as will bring the products of their labor into competition with the products of free labor.

Certain convicts.

SECTION 1137. HOW DISPOSED OF. When misdemeanor convicts are sentenced to work in a chain-gang on the public works or road, or are confined in jail for non-payment of fines, the ordinary, county judge, or board of commissioners, of the county where the convictions were had or where the convicts are confined, may place them in the county or elsewhere, to work upon the public works of the county in chain-gangs or otherwise.

Whipping bosses.

SECTION 1146. APPOINTMENT OF WHIPPING-BOSSES. The authorities of any county or municipal corporation, employing or having labor performed by convicts in such county or municipal corporation, may appoint a whipping-boss for such convicts, and fix his compensation and prescribe his duties. Proper and necessary discipline may be administered by the superintendent or other officer or person having control, under authority, of a convict, without the employment of a whipping-boss.

Whipping occasions.

SECTION 1147. NO WHIPPING SAVE WHEN REASONABLY NECESSARY. No whipping shall be administered to a convict by a whipping boss or other officer or person, except in cases where it is reasonably necessary to enforce discipline or compel work or labor by the convict.[1]

Printed rules.

SECTION 1148. RULES TO BE PREPARED AND PUBLISHED FOR GOVERNMENT OF CONVICTS. Said authorities shall prepare and have published full and complete, reasonable and humane rules and regulations for the government of the convicts under their control. . . .

Officers not liable for injury.

SECTION 1149. SUPERINTENDENT, ETC., NOT PERSONALLY LIABLE FOR DAMAGE TO CONVICT. No superintendent, commissioner, guard, whipping-boss, or other person or employer of convicts, shall be personally liable for any injury or damage to a convict resulting from the employment, care, keeping, control, work and discipline of convicts who are under the direction of said governing authorities, respectively, in accordance with reasonable and humane rules and regulations thus adopted.

[1] The Georgia Sunday law contains no exemption whatever for observers of another day. The extremity to which such might be subjected under it is in marked contrast with section 2776 of the 1888 code of Iowa (since somewhat modified), reading as follows: "A person whose religious faith and practice are to keep the seventh day of the week as a day set apart by divine command, and dedicated to rest and religious uses, can not be compelled to attend as a juror on that day, and shall in other respects be protected in the enjoyment of his opinions, *to the same extent as those who keep the first day of the week.*" This meant equality so far as Sabbatarians and Sunday-keepers are concerned. But even this fell short of full justice and equality. Why should not the equality be extended to all — to the nullifidian as well as to the Christian? "*All men,*" not simply Christians, "are created equal," and any infringement of this equality is un-American. Sunday laws, therefore, are in direct conflict with the great American principle of the equality of rights. See section 31 under Illinois, page 579.

Good behavior.

SECTION 1150. GOOD BEHAVIOR OF MISDEMEANOR CONVICTS. Persons having charge of chain-gangs of misdemeanor convicts shall keep a book in which shall be entered the names of the convicts under their charge, and at the end of each laboring day they shall record opposite the name of each his conduct during that day, and should it appear from this book that the conduct of any one has been good, and that he has been diligent in performing the work assigned to him, his time of service and confinement shall be shortened four days in each month for the time of sentence.

Insurrection.

SECTION 57. PUNISHMENT OF INSURRECTION. Any person convicted of the offense of insurrection or an attempt to incite insurrection, shall be punished with death; or, if the jury recommend to mercy, confinement in the penitentiary for not less than five nor more than twenty years.

[Code of Georgia, 1901, volume iv.]

Shooting.

SECTION 6694. SHOOTING ON SUNDAY PROHIBITED. It shall be unlawful for any person to willfully or wantonly fire off or discharge any loaded gun or pistol on Sunday, except in defense of personal property.

Misdemeanor.

SECTION 6695. PENALTY. Any violation of this act shall be a misdemeanor, and upon conviction shall be punished as prescribed in section 1039 of the Criminal Code of Georgia of 1895.

HAWAII.

[Revised Laws of Hawaii, 1905.]

VIOLATING THE SABBATH.

Meaning of Sunday.

SECTION 3189. SUNDAY DEFINED. Sunday within the meaning of the provisions of this chapter, is the first day of the week, and includes the time between the midnight preceding and the midnight following the same day.

Religious worship permitted.

Meals may be sold.

SECTION 3190. LABOR ON SUNDAY. All labor on Sunday is forbidden, excepting works of necessity or mercy, in which are included all labor that is needful for the good order, health, comfort or safety of the community, or for the protection of property from unforeseen disaster, or danger of destruction or injury, or which may be required by the prosecution or attendance upon religious worship, or for the furnishing of opportunities of reading or study; *Provided, however,* that on Sunday until nine o'clock in the morning barber shops may be kept open and fresh meat and fresh fish may be sold and delivered; that until nine o'clock in the morning and after three o'clock in the afternoon milk may be delivered, and cattle, sheep, and swine may be slaughtered; that during the entire day meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; drugs, medicines and surgical appliances may be sold, personal baggage may

be conveyed to and from vessels leaving and arriving at port on that day, the railroads may on Sunday carry passengers to connect with the steamers, and public carriages, horse-cars and licensed shore boats may convey passengers for hire, and that all labor which may be lawfully performed on Sunday shall be conducted, as far as possible, so as not to interfere with the right of the community and of each individual to quiet and repose.

Public amusements forbidden.

SECTION 3191. AMUSEMENTS ON SUNDAY. All public amusements, sports, shows and games on Sunday are hereby forbidden, and no one shall prosecute or take part in any recreation, amusement, sport or game not of a public character, on Sunday, in such a manner as to interfere with the right of the community and of each individual to quiet and repose.

Penalty.

SECTION 3192. PUNISHMENT. Any person violating any of the provisions of sections 3190 and 3191, shall, on conviction, be fined not over fifty dollars or be imprisoned not over thirty days.

Civil processes void.

SECTION 3193. SERVING PROCESS ON SUNDAY. Except as otherwise provided, no person shall serve or execute any civil process on Sunday, and any such service or execution shall be void.

Sale of liquor prohibited.

SECTION 1457. SUNDAY SALES PROHIBITED. Any holder of a license under Part Four of this chapter, who shall sell or retail any spirituous liquor or permit or suffer the same to be drunk in his house or premises on Sunday, shall be liable to a penalty not exceeding two hundred dollars. But this section shall not apply to the ordinary supplies furnished to *bona fide* boarders and lodgers in the house or premises.

Drinking forbidden.

SECTION 1458. DRINKING DURING PROHIBITED HOURS — PENALTY. Every person who shall be found drinking on any premises licensed under Part Four of this chapter, during prohibited hours or on Sunday, shall be liable to the same penalty as the licensee is subject to for keeping open his licensed house at times not allowed by his license, and such persons may be arrested by any police officer.

IDAHO.[1]

[The Revised Codes of Idaho, 1908, volume ii.]

Law passed March 14, 1907. In effect May 13, 1907.

SECTION 6823. SUNDAY REST. The first day of the week, commonly called Sunday, is hereby set apart as a day of public rest.

SECTION 6824. BUSINESS TO BE SUSPENDED. It shall be unlawful for any person or persons in this State to keep open on Sunday for

Law framed and secured by a minister.

[1] This, one of the latest State Sunday laws, passed March 14, 1907, and going into effect sixty days later, was framed and its passage secured through religious activities and religious pressure. The "Twentieth Century Quarterly," of December, 1908, the official organ of the International Reform Bureau, of Washington, D. C., of which Dr. W. F. Crafts is superintendent and general manager, says: "The Sabbath is now more attacked and less defended than ever before, but there is a plan on foot

Violations. the purpose of any business, trade, or sale of goods, wares, or merchandise, any shop, store, building, or place of business whatever; *Provided,* that hotels and restaurants may furnish lodging and meals; and, *Provided,* that this section shall not apply to livery stables, or to stores in so far as the sale of medicines or sick-room supplies are Exceptions. concerned, or to undertakers while providing for the dead, or to news stands in so far as the quiet sale and delivery of daily papers and magazines is concerned, nor to the sale of non-intoxicating refreshments, candies, and cigars. Any person or persons violating this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, or shall be imprisoned in the county jail Fine. not to exceed thirty days, and upon a second conviction shall be punished by both such fine and imprisonment.

SECTION 6825. SALE OF LIQUOR AND PUBLIC AMUSEMENT. It shall be unlawful for any person or persons in this State to keep open on Sunday any saloon, or place of any kind or description in which Liquors. spirituous, vinous, malt, or any intoxicating liquors are at any time sold or exposed for sale, to be sold or exposed for sale; or to give, or sell, or otherwise dispose of any spirituous, vinous, malt, or any intoxicating liquors except as provided for in other Theaters. parts of this chapter; or to keep open any theater, playhouse, dance-house, race-track, merry-go-round, circus, or show, concert saloon, billiard or pool room, bowling alley, variety hall, or any such place of public amusement. Any person or persons violating this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than thirty dollars nor more than two hundred and fifty dollars for each offense, and shall be punished by imprisonment in the county jail not to exceed ninety days; and upon a second conviction any license which may have been granted Horse-racing. for opening and maintaining any such place of business shall also be rendered void, and shall not be renewed within two years next thereafter.

SECTION 6826. HORSE-RACING ON SUNDAY. It shall be unlawful for any person or persons in this State to engage on Sunday in horse-racing. Any person or persons violating this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than five dollars nor more than one hundred dollars, or shall be imprisoned in the county jail not to exceed thirty days, or shall suffer both such fine and imprisonment.

to reorganize and re-enforce the American Sabbath Union, which was organized twenty years ago by the National Conferences of fourteen denominations. The most encouraging recent victory is the Idaho Sunday law, drawn and carried to victory by the Reform Bureau's Pacific Coast secretary, Dr. G. L. Tufts, who is now leading the united forces of California, in hopeful efforts to secure a similar law." This very clearly reveals who are behind this whole Sunday-law movement in this country. It is, as it always has been, the religious, church and state element.

SECTION 6827. PUBLIC OFFICERS TO ENFORCE ACT. It shall be the duty of each prosecuting attorney, sheriff, constable, city or town marshal, or any and all other public officers in this State, to inform against and diligently prosecute any and all persons guilty of the violations of the provisions of the four preceding sections, either upon credible information as to any such violation, or upon reasonable cause to believe that there has been any such violation. Any said officer who shall refuse or willfully neglect to inform against and prosecute said offenders against the four preceding sections, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than fifty dollars nor more than five hundred dollars, and the court before which said officer shall be tried shall declare the office or appointment held by said officer vacant for the remainder of his term.[1]

Officers to spy.

Not to spy a misdemeanor.

SECTION 6828. DISPOSAL OF FINES. All fines collected from the violation of the five preceding sections shall be paid into the common school fund of the county.

[1] The efforts being put forth in this country to-day to enforce the observance of Sunday by law partake of the same nature as the inquisitorial work of the dark ages, and possess the same characteristics. In an article in the "Northwestern Christian Advocate," of December 11, 1907, Rev. W. F. Crafts, speaking of the new Idaho Sunday law, said:

"The Pacific Coast secretary of the International Reform Bureau [Rev. G. L. Tufts] combined in this bill the best elements of forty other State Sunday laws. It is especially a model to be studied and copied in that it provides that any executive officer found guilty of neglecting to enforce it is ineligible for any public office for two years. Every politician will see genius in that penalty, and will not be surprised to hear the law is well enforced."

Law contains threat to negligent officials.

This not only shows the origin of this Idaho Sunday law,— an officer of the International Reform Bureau of Washington, D. C., and a preacher, by the way,— and also the kind of law these "reformers" consider "model" Sunday laws, but it reveals the shrewd, tactful, inquisitorial cunning characteristic of promoters of such legislation, for inventing methods to force the state to enforce their religious measures and do their bidding. Why should Sunday laws any more than other laws contain coercing, intimidating threats to officials for failure to enforce the law? Note the striking likeness between the penalty here laid upon civil officers for failing to enforce this Idaho Sunday law and the penalty laid upon civil officers in the days of the Inquisition for failure to enforce the judgments of the inquisitors. The following rule, briefly stated, was adopted then:

An inquisitorial method.

Any civil officer who refused to co-operate in the work of the Inquisition was himself excommunicated, and all who would hold intercourse with him; next, the city of his residence was laid under interdict; and, if more stress was needed, *the officials were deposed, or "deprived of their posts."* See "The Pope and the Council," by Janus, page 241; and "Romanism Analized," by John M'Donald, B. D., page 359.

Delinquents deprived of office.

Is it too much to say that the same spirit inspired both these provisions? And can any one doubt that the revival of Sunday laws and Sunday enforcement to-day will re-establish the Inquisition and inquisitorial methods? If so, let him read carefully the following suggestion as to methods of enforcing Sunday observance in cities, taken from a leaflet prepared by Rev. W. F. Crafts and Rev. J. B. Davison, entitled, "Plan of Work in Defense of the Lord's Day:"

"THE INVESTIGATING COMMITTEE, appointed by the secretary and known only to himself, may consist of four or eight. The first (or first two) shall on the first Monday of each month, the second on the

An inquisitorial committee.

ILLINOIS.

[Revised Statutes of Illinois, 1908, page 764.]

SUNDAY.

Sunday tippling-houses prohibited.

SECTION 259. TIPPLING-HOUSE ON. Whoever keeps open any tippling-house, or place where liquor is sold or given away, upon the first day of the week, commonly called Sunday, shall be fined not exceeding two hundred dollars.

SECTION 260. DEFINITION. Sunday shall include the time from midnight to midnight.[1]

Disturbing the peace.

SECTION 261. DISTURBING PEACE OF SOCIETY ON. Whoever disturbs the peace and good order of society by labor (works of necessity and charity excepted), or by any amusement or diversion on Sunday, shall be fined not exceeding twenty-five dollars. This section shall not be construed to prevent watermen and railroad companies from landing their passengers, or watermen from loading and unloading their cargoes, or ferrymen from carrying over the water travelers and persons moving their families, on the first day of the week, nor to prevent the due exercise of the rights of conscience by whomever thinks proper to keep any other day as a Sabbath.

Exemption.

SECTION 262. DISTURBING PEACE OF FAMILY ON. Whoever shall be guilty of any noise, rout, or amusement on the first day of the

second, and so on, report in writing and in detail to the secretary from careful personal observations made the previous day whatever Sunday work or dissipation was discovered. Or the whole city may be divided into small districts and one or two be appointed in each district to investigate every Sunday and report every Monday. These facts the secretary shall report early in the week to the proper civil officer, usually requiring him to secure his own evidence through the police or otherwise. The secretary shall also report these facts at the general monthly committee meeting, as the diagnosis through which cures of these evils may be wisely applied. The Press Committee shall report these facts, so far as it is wise, in the press once a month, showing progress or decline. As of old an unjust judge was aroused to justice by importunity, so many an executive officer may be driven from habitual perjury to the observation of his oath, if the record of his neglect is persistently set before him and the public month after month." Page 4.

Spying upon the people.

As every one can see, this would be nothing less than a secret inquisitorial committee, spying upon the people and reporting to the civil authorities whatever violations of the law they thus discover, and then taking means to expose the authorities whenever they fail to enforce the law. What would this be but the Inquisition over again?

In his message to the State Legislature, dated January 3, 1911, Governor James H. Hawley, of Idaho, speaking of this law, said:

"While perhaps a worthy object was sought to be attained by its passage, the provisions of the act itself are in many respects both absurd and contradictory. . . . Personally I do not believe it proper to legislate upon matters of this kind. . . . Undoubtedly the act needs amendment if it continues in force, but I would suggest as a still better remedy that the entire act be repealed." Pages 41, 42 of the published message.

[1] On this see Lev. 23: 32; Mark 1: 32; Deut. 16: 6; Judges 14: 18.

week, called Sunday, whereby the peace of any private family may be disturbed, shall be fined not exceeding twenty-five dollars. Disturbance of families.

[Revised Statutes of Illinois, 1908, page 1597.]

PENITENTIARIES.

SECTION 31. SUNDAY. Facilities for attending religious services regularly on Sundays shall be afforded each convict, so far as the same can be done judiciously, and upon no pretext shall a convict on contract be required to labor on Sunday, nor shall any convict be required to do other than necessary labor for the State on that day. Sunday services to be provided for convicts.

INDIANA.

[Revised Statutes of Indiana, 1908.]

SECTION 2364. SABBATH-BREAKING. Whoever, being over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, at common labor, or engaged in his usual avocation, works of charity and necessity only excepted, shall be fined not less than one dollar nor more than ten dollars; but nothing herein contained shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers and those engaged in conveying them, families removing, keepers of toll-bridges and toll-gates, ferrymen acting as such, and persons engaged in the publication and distribution of news. Sabbatarians excepted.

SECTION 2365. BARBERING ON SUNDAY. That it shall be unlawful for any person or persons to carry on or engage in the art or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person. Barbering prohibited.

SECTION 2366. SHOPS TO BE CLOSED. That it shall be unlawful for any such person or persons, association, firm, corporation or club to keep open their shops or places of business aforesaid, on said first day of the week, commonly called Sunday, for any of the purposes mentioned in section 1 of this act; *Provided, however,* that nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath, and who actually refrain from secular business on that day. Exceptions.

SECTION 2367. PENALTY. Every person violating any of the provisions of this act shall, upon conviction thereof, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense, to which may be added imprisonment in the county jail not more than thirty days. Penalty.

SECTION 2368. SUNDAY HUNTING PROHIBITED. Whoever hunts or shoots song birds or any species of game with any kind of firearms No hunting.

on the first day of the week commonly called Sunday, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten (10) nor more than fifty (50) dollars.

Baseball and games.

SECTION 2369. BASEBALL OR GAMES ON SUNDAY. It shall be unlawful for any person or persons to engage in playing any game of baseball, football, or other games where any fee is charged, or where any reward or prize, or profit, or article of value is depending on the result of such game, on the first day of the week, commonly called Sunday; and every person so offending shall be deemed guilty of a misdemeanor, and, on conviction, shall be fined not exceeding twenty-five dollars.

Limit of time.

SECTION 1888. SABBATH DESECRATION. Prosecutions for the desecration of the Sabbath day must be commenced within six months after the commission of the offense.

No hunting.

SECTION 2526. WILD BIRDS — SUNDAY HUNTING. Whoever hunts or shoots wild birds, rabbits, or any species of game with any kind of firearms on the first day of the week, commonly called Sunday, shall, on conviction, be fined not less than one dollar nor more than fifty dollars. [Section 2368 very similar.]

Liquor selling.

SECTION 2492. LIQUOR — SELLING ON SUNDAY AND HOLIDAYS. Whoever shall sell, barter, or give away, to be drunk as a beverage, any spirituous, vinous, malt, or other intoxicating liquors, upon Sunday, the fourth of July, . . . shall, on conviction, be fined not less than ten dollars nor more than fifty dollars, to which may be added imprisonment in the county jail or workhouse not less than ten days nor more than sixty days.

Druggists and Sunday.

SECTION 2493. LIQUOR — DRUGGIST SELLING ON SUNDAY. It shall be unlawful for any druggist or druggist's clerk to sell, barter, or give away any spirituous, vinous, malt, or other intoxicating liquor on Sunday, . . . unless the person to whom the same is sold, bartered, or given, shall have first procured a written prescription therefor from some regular practicing physician of the county where the same is sold, bartered, or given away. And any person so offending,

Penalty.

shall, on conviction, be fined not less than ten dollars nor more than fifty dollars, to which may be added imprisonment in the county jail or workhouse not less than ten days nor more than sixty days.

[Acts of 1909, page 436.]

General provisions.

SECTION 467. [As amended by act of March 8, 1909 (section 1).] Whoever, being over fourteen years of age, is found on the first day of the week, commonly called Sunday, rioting, hunting, fishing, quarreling, at common labor or engaged in his usual avocation, works of charity and necessity only excepted, shall be fined not less than one dollar nor more than ten dollars; but nothing herein contained

Sabbatarians exempt.

shall be construed to affect such as conscientiously observe the seventh day of the week as the Sabbath, travelers, and those engaged in conveying them, families removing, keepers of toll-bridges and

toll-gates, ferrymen acting as such and persons engaged in the publication and distribution of news, or persons engaged in playing the game of baseball between the hours of one o'clock P. M. and six o'clock P. M., and not less than one thousand feet distant from any established house of worship or permanent church structure used for religious services, or any public hospital or private hospital erected prior to the passage of this act.

Baseball law repealed.

SECTION 2 [of same act of March 8, 1909]. So much of section 468 of said act approved March 10, 1905, as makes it unlawful for any one to engage in playing any game of baseball between one o'clock P. M. and six o'clock P. M. on Sunday, is hereby repealed.[1]

IOWA.

[Code of Iowa, Supplement of 1907.]

SECTION 2448. INTOXICATING LIQUORS — SALOONS — OPENING AND CLOSING. The place shall not be open nor any sales be made earlier than five A. M., nor later than ten P. M., of any day. It shall not be open at all, nor shall any sales be made, on the first day of the week, commonly called Sunday. . . .

No liquor selling on Sunday.

[Code of Iowa, 1897.]

SECTION 3691. PERSONS WHO KEEP THE SEVENTH DAY. A person whose religious faith requires him to keep the seventh day of the week cannot be compelled to attend as a juror on that day.

Sabbatarians exempt.

SECTION 5040. BREACH OF SABBATH. If any person be found on the first day of the week, commonly called Sunday, engaged in carrying firearms, dancing, hunting, shooting, horse-racing, or in any manner disturbing a worshiping assembly or private family, or in buying or selling property of any kind, or in any labor except that of necessity or charity, he shall be fined not more than five nor less than one dollar, and be imprisoned in the county jail until the fine, with costs of prosecution, shall be paid, but nothing herein contained shall be construed to extend to those who conscientiously observe the seventh day of the week as the Sabbath, or to prevent persons traveling or families emigrating from pursuing their journey, or keepers of toll-bridges, toll-gates and ferrymen from attending the same.

Sunday violation.

Sabbatarians exempt.

KANSAS.

[General Statutes of Kansas, 1905.]

SECTION 2341. LABORING ON SUNDAY. Every person who shall either labor himself, or compel his apprentice, servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of

Secular employments prohibited on Sunday.

[1] Became law without governor's signature.

necessity or charity, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding twenty-five dollars.

Sabbatarians exempt.

SECTION 2342. EXCEPTIONS. The last section shall not extend to any person who is a member of a religious society, by whom any other than the first day of the week is observed as a Sabbath, so that he observes such Sabbath, nor to prohibit any ferryman from crossing passengers on any day in the week.

Sunday horse-racing, etc., prohibited.

SECTION 2343. HORSE-RACING, ETC., ON SUNDAY. Every person who shall be convicted of horse-racing, cock fighting, or playing at cards, or game of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars.

Sunday trafficking prohibited.

SECTION 2344. SELLING, ETC., ON SUNDAY. Every person who shall expose to sale any goods, wares, or merchandise, or shall keep open any ale or porter house, grocery, or tippling-shop, or shall sell or retail any fermented or distilled liquor, on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars.

Exceptions.

SECTION 2345. EXCEPTIONS. The last section shall not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Sunday hunting prohibited.

SECTION 3320. HUNTING ON SUNDAY. Every person who shall engage in hunting or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and upon conviction be fined in a sum not less than five nor more than twenty dollars.

REQUIREMENTS OF CITIES OF THE FIRST CLASS.

Gambling.

SECTION 783. DRAMSHOPS, GAMBLING, ETC. To prohibit and suppress tippling-shops, saloons, dramshops, club-rooms, opium dens; . . . and desecration of the Sabbath day. . . .

REQUIREMENTS OF CITIES OF THE SECOND CLASS.

Tippling-houses.

SECTION 1061. TIPPLING-HOUSES, ETC. The city council shall have power to enact ordinances to restrain, prohibit, and suppress tippling-houses, . . . and desecration of the Sabbath day, commonly called Sunday. . . .

REQUIREMENTS OF CITIES OF THE THIRD CLASS.

Desecration.

SECTION 1201. The city council shall have power to enact ordinances to restrain, prohibit, and suppress . . . desecrations of the Sabbath day commonly called Sunday. . . .

SABBATH.

SECTION 6604. EXEMPTION. That no person whose religious faith and practice is to keep the seventh day of the week, commonly called

Saturday, as a day set apart by divine command as the Sabbath of rest from labor and dedicated to the worship of God, shall be subject to perform military duty or to serve as a juryman in a justice's court on that day, except that such person shall be subject to perform military duty at any time in case of insurrection, invasion, or time of war.

Sabbatarians exempt.

SECTION 6605. PROCESS. That any person who shall knowingly cause or procure any process issued from a justice's court in a civil suit to be served on that day upon any such person, or who shall serve any such process made returnable on that day, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or both.

Sabbatarians not to be disturbed by process on Sabbath.

SECTION 6606. PENALTY. That any person who shall in like manner procure any such suit pending in such court against any person of such religious faith and practice to be adjourned for trial on that day, shall also be deemed guilty of a misdemeanor, and subject to a like punishment.

A misdemeanor.

KENTUCKY.

[General Statutes of Kentucky, 1909.]

SECTION 454. If any proceeding is directed by law to take place, or any act is directed to be done, on a particular day of a month, if that day happen to be Sunday, the proceeding shall take place, or the act shall be done, on the next day.

SECTION 1138. Prosecutions by the commonwealth for felony, unless otherwise specially provided, shall not be barred by lapse of time or any law of limitations. Prosecutions by the commonwealth to recover a penalty for a violation of any penal statute or law, and an action or procedure at the instance of any person, to recover any such penalty, shall be commenced within one year after the right to such penalty accrued, and not after, unless a different time is allowed by law imposing the penalty. Prosecutions for profane swearing, cursing, or being drunk, or Sabbath-breaking, and against surveyors of public roads, shall be commenced within six months after the offense is committed, and not after.

Suit to be commenced within six months.

SECTION 1303. SUNDAY — KEEPING PLACE FOR SALE OPEN ON. Any person who shall, on Sunday, keep open a barroom or other place for the sale of spirituous, vinous, or malt liquors, or who shall sell or otherwise dispose of such liquors, or any of them, on Sunday, shall be fined not less than ten nor more than fifty dollars for each offense.

Liquor selling forbidden.

SECTION 1321. SUNDAY — WORK OTHER THAN WORK OF CHARITY PROHIBITED. No work or business shall be done on the Sabbath day, except the ordinary household offices, or other work of necessity or

Secular employments prohibited on Sunday.

charity, or work required in the maintenance or operation of a ferry, skiff, or steamboat, or steam or street railroads. If any person on the Sabbath day shall himself be found at his own or at any other trade or calling, or shall employ his apprentices or other person in labor or other business, whether the same be for profit or amusement, unless as is permitted above, he shall be fined not less than two nor more than fifty dollars for each offense. Every person or apprentice so employed shall be deemed a separate offense. Persons who are members of a religious society, who observe as a Sabbath any other day in the week than Sunday, shall not be liable to the penalties prescribed in this section, if they observe as a Sabbath one day in each seven, as herein provided.[1]

Sabbatarians exempt.

Fine for barbering.

SECTION 1322. SUNDAY — BARBERING ON. That any person who engages in the business of barbering on Sunday shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than five dollars, and upon a second conviction for a like offense, shall be fined not less than ten dollars and not more than twenty-five dollars, or imprisoned in the county jail for a period of not less than five days nor more than ten days, or be both fined and imprisoned, at the discretion of the court.[2]

Possible fine of $50.

SECTION 1323. SUNDAY — HUNTING ON. If any person shall hunt game, with a gun or dogs, on the Sabbath, he shall be fined not less than five nor more than fifty dollars for each offense.

Liquor selling.

SECTION 1369. SELLING LIQUOR IN BILLIARD OR POOL-ROOM — PLAYING ON SUNDAY. No spirituous liquors shall be kept or sold in any room where a billiard, pigeon-hole, or pool table is kept; nor shall any game be played on such table on Sunday. Upon conviction for a violation of either of the provisions of this section, the keeper or controller of such table or tables shall be fined sixty dollars for each offense, and his license shall be forfeited.

SECTION 1979. BETTING ON BILLIARDS OR POOL — SELLING LIQUOR IN ROOM — PLAYING ON SUNDAY — PENALTY. . . . Nor shall any game be played on any such tables on Sunday; and any person licensed to keep any such tables who shall sell, or permit to be sold or drunk any spirituous, vinous, or malt liquor in the room where such tables are kept, or shall permit any game to be played thereon on Sunday, shall be fined twenty-five dollars for each offense, and forfeit his license.

Liquor selling unlawful.

SECTION 2404. UNLAWFUL ACTS OF LIQUOR DEALER. It shall be unlawful for any person to whom a license is granted as contemplated in this subdivision, . . . to sell any liquor on Sunday; . . .

[1] This appears to have been the model for the exemption clause in the Johnston District Sunday bill as first introduced. See footnote on page 399.

[2] See note on similar law in New York, page 615.

LOUISIANA.

[Revised Laws of Louisiana, 1904, page 399.]

SECTION 1. That from and after the thirty-first day of December, A. D. 1886, all stores, shops, saloons, and all places of public business, which are or may be licensed under the law of the State of Louisiana, or under any parochial or municipal law or ordinance, and all plantation stores are hereby required to be closed at twelve o'clock on Saturday nights, and to remain closed continuously for twenty-four (24) hours, during which period of time it shall not be lawful for the proprietors thereof to give, trade, barter, exchange, or sell any of the stock or any article of merchandise kept in any such establishment. Trading prohibited on Sunday.

SECTION 2. That whosoever shall violate the provisions of this act, for each offense shall be deemed guilty of a misdemeanor, and on trial and conviction, shall pay a fine of not less than twenty-five dollars nor more than two hundred and fifty dollars, or be imprisoned for not less than ten days nor more than thirty days, or both, at the discretion of the court; provisions of this act shall not apply to newsdealers, keepers of soda fountains, places of resort for recreation and health, watering-places, and public parks, nor prevent the sale of ice. Penalty.

SECTION 3. That the provisions of this act shall not apply to newspaper offices, printing-offices, bookstores, drug stores, apothecary shops, undertaker shops, public and private markets, bakeries, dairies, livery stables, railroads, whether steam or horse, hotels, boarding-houses, steamboats and other vessels, warehouses for receiving and forwarding freights, restaurants, telegraph offices, and theaters, or any place of amusement, providing no intoxicating liquors are sold in the premises; *Provided,* that stores may be opened for the purpose of selling anything necessary in sickness and for burial purposes; *Provided,* that nothing in this act shall be construed so as to allow hotels or boarding-houses to sell or dispose of alcoholic liquors, except wine for table use on Sundays; *And provided further,* that no alcoholic, vinous, or malt liquors shall be given, traded, or bartered, or sold, or delivered in any public place on said day, except when actually administered or prescribed by a practicing physician in the discharge of his professional duties in case of sickness; in such case the physicians administering the intoxicating liquors may charge therefor. Exceptions.

MAINE.

[Revised Statutes of the State of Maine, 1903, page 933.]

SECTION 22. Whoever on the Lord's day, or at any other time, behaves rudely or indecently within the walls of any house of public worship; willfully interrupts or disturbs any assembly for religious worship within the place of such assembly or out of it; sells or exposes for sale within one mile thereof and during the time of their Acts prohibited on Sunday.

meeting, refreshments, or merchandise, except in his usual course and place of business; exhibits any show or play; engages or aids in any horse-race, gambling, or other sport, to the disturbance of such assembly; or, coming within their neighborhood, refuses, on request, either immediately and peaceably to retire beyond their hearing, or to conform to their established regulations, shall be punished by imprisonment for not more than thirty days, and by fine not exceeding ten dollars.

Secular employments prohibited.

SECTION 25. Whoever, on the Lord's day, keeps open his shop, workhouse, warehouse, or place of business; travels, or does any work, labor, or business on that day, except works of necessity or charity; uses any sport, game, or recreation; or is present at any dancing, public diversion, show, or entertainment, encouraging the same, shall be punished by fine not exceeding ten dollars.

Sunday loafing prohibited.

SECTION 26. If any innholder or victualer, on the Lord's day, suffers any persons, except travelers, strangers, or lodgers, to abide in his house, yard, or field, drinking, or spending their time idly, at play or doing any secular business, except works of charity or necessity, he shall be punished by fine not exceeding four dollars for each person thus suffered to abide; and if after conviction he is again guilty, by fine not exceeding ten dollars for each offense; and upon a third conviction, he shall also be incapable of holding any license; and every person so abiding shall be fined not exceeding four dollars for each offense.

SECTION 27. The Lord's day includes the time between twelve o'clock on Saturday night and twelve o'clock on Sunday night.

Hunting forbidden.

SECTION 21, PAGE 358, PAR. 3. Sunday is a close time, on which it is not lawful to hunt, kill, or destroy game or birds of any kind, under the penalties imposed therefor during other close time; but the penalties already imposed for the violation of the Sunday laws by the statutes of this State are not hereby repealed or diminished.

Sunday contracts.

SECTION 131, PAGE 755. No person who receives a valuable consideration for a contract, express or implied, made on the Lord's day, shall defend any action on such contract on the ground that it was so made, until he restores such consideration; nor shall the provisions of chapter 125 relating to the observance of the Lord's day, affect in any way the rights of remedy of either party in any action for a tort or injury suffered on that day.

Sundays in jails.

SECTION 41, PAGE 712. The jailer, at the expense of the county, shall furnish to each prisoner who is able to read, a copy of the Bible, and to all, on Sundays, such religious instruction as he may be able to obtain without expense, and to such as may be benefited thereby, instruction in reading, writing, and arithmetic one hour every evening, except Sunday. It shall be his further duty to receive for their use, from whatever source, by loan or contribution, any books or literature of a moral or religious tone, and to exclude those of opposite tendencies.

SECTION 28. No person conscientiously believing that the seventh day of the week ought to be observed as the Sabbath, and actually refraining from secular business and labor on that day, is liable to said penalties for doing such business or labor on the first day of the week, if he does not disturb other persons.[1]

Sabbatarians exempt.

SECTION 29. Any person may prosecute for all offenses described in sections twenty-two, twenty-five, and twenty-six, at any time within six months after the commission thereof.

Suit to be commenced within six months.

MARYLAND.

[Maryland Code of Public General Laws, 1904, volume i, article 27, page 904.]

SABBATH-BREAKING.

SECTION 384. No person whatsoever shall work or do any bodily labor on the Lord's day, commonly called Sunday, and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on the Lord's day (works of necessity and charity always excepted), nor shall suffer or permit any children or servants to profane the Lord's day by gaming, fishing, fowling, hunting, or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county.[2]

Acts prohibited on Sunday.

SECTION 385. No person in this State shall sell, dispose of, barter, or if a dealer in any one or more of the articles of merchandise in this section mentioned, shall give away on the Sabbath day, commonly called Sunday, any tobacco, cigars, candy, soda, or mineral waters, spirituous or fermented liquors, cordials, lager beer, wine, cider, or any other goods, wares, or merchandise whatsoever; and any person violating any one of the provisions in this section shall be liable to indictment in any court in this State having criminal jurisdiction, and upon conviction thereof shall be fined a sum not less than twenty nor more than fifty dollars, in the discretion of the court, for the first offense, and if convicted a second time for a violation of this section, the person or persons so offending shall be fined a sum not less than fifty nor more than five hundred dollars, and be imprisoned for not less than ten nor more than thirty days, in the discretion of the court,

Sunday trafficking prohibited.

Penalties.

[1] John Stuart Mill, in treating on the subject of illegitimate authority of society over the individual, says: "There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings by persisting in their abominable worship or creed."

[2] This is a relic of the law of 1723. See *ante* pages 46, 47.

and his, her, or their license, if any were issued, shall be declared null and void by the judge of said court; and it shall not be lawful for such person or persons to obtain another license for the period of twelve months from the time of such conviction, nor shall a license be obtained by any other person or persons to carry on said business on the premises or elsewhere, if the person, so as aforesaid convicted, has any interest whatever therein, or shall derive any profit whatever therefrom; and in case of being convicted more than twice for a violation of this section, such person or persons on each occasion shall be imprisoned for not less than thirty nor more than sixty days, and fined a sum not less than double that imposed on such person or persons on the last preceding conviction; and his, her, or their license, if any were issued, shall be declared null and void by the court, and no new license shall be issued to such person or persons for a period of two years from the time of such conviction, nor to any one else to carry on said business wherein he or she is in anywise interested, as before provided for the second violation of the provisions of this section; one half of all the fines to be imposed under this section shall be paid to the State, and the other half to the informer; this section is not to apply to milk or ice dealers in supplying their customers, or to apothecaries when putting up *bona fide* prescriptions.

Places of amusement prohibited on Sunday.

SECTION 386. It shall not be lawful to keep open or use any dancing saloon, opera house, tenpin alley, barber saloon, or ball alley within this State on the Sabbath day, commonly called Sunday; and any person or persons, or body politic or corporate, who shall violate any provisions of this section, or cause or knowingly permit the same to be violated by a person or persons in his, her, or its employ, shall be liable to indictment in any court of this State having criminal jurisdiction, and upon conviction thereof, shall be fined a sum not less than fifty dollars nor more than one hundred dollars in the discretion of the court, for the first offense; and if convicted a second time for a violation of this section, the person or persons, or body politic or corporate, shall be fined a sum not less than one hundred nor more than five hundred dollars; and if a natural person, shall be imprisoned not less than ten nor more than thirty days, in the discretion of the court; and in the case of any conviction or convictions under this section, subsequent to the second, such person or persons, body politic or corporate, shall be fined on each occasion a sum at least double that imposed upon him, her, them, or it, on the last preceding conviction; and if a natural person, shall be imprisoned not less than thirty nor more than sixty days, in the discretion of the court; all fines to be imposed under this section shall be paid to the State.

Penalties.

[Maryland Code of Public General Laws, 1904, vol. ii, art. 72, page 1578.]

OYSTERS.

SECTION 17. It shall be unlawful for any person to take or catch oysters on Sunday or at night; and any person violating this section shall, on conviction thereof, be fined a sum not less than fifty dollars nor more than three hundred dollars, or sentenced to the house of correction for a period of not less than three months nor more than one year, or forfeit the boat, vessel, or canoe used in violation of this section, in the discretion of the judge or justice of the peace trying the case.

Oyster-catching.

MASSACHUSETTS.

[Supplement of Revised Laws of Massachusetts, 1902-1906.]

OF THE OBSERVANCE OF THE LORD'S DAY.

Approved June 9, 1904.

SECTION 1, PAGE 419. Whoever, on the Lord's day, is present at a game, sport, play, or public diversion, except a concert of sacred music, or an entertainment given in good faith by a religious or charitable society in aid of a religious or charitable purpose, the entire proceeds of which, if any, less only the necessary and reasonable expenses, not to exceed twenty-five per cent of such proceeds, are to be devoted exclusively to a religious or charitable purpose, shall be punished by a fine of not more than five dollars for each offense.

No diversion except in interest of religion.

Approved June 9, 1904.

SECTION 2. Whoever, on the Lord's day, keeps open his shop, warehouse or workhouse, or does any manner of labor, business, or work, except works of necessity and charity, or takes part in any sport, game, play, or public diversion, except a concert of sacred music or an entertainment given in good faith by a religious or charitable society in aid of a religious or charitable purpose, the entire proceeds of which, if any, less only the necessary and reasonable expenses, not to exceed twenty-five per cent of such proceeds, are to be devoted exclusively to a religious or charitable purpose, shall be punished by a fine of not more than fifty dollars for each offense; and the proprietor, manager, or person in charge of such game, sport, play, or public diversion, except as aforesaid, shall be punished by a fine of not less than fifty nor more than five hundred dollars for each offense.

Sacred concerts.

SECTION 3, PAGE 420. The provisions of the preceding section shall not be held to prohibit the manufacture and distribution of steam, gas, or electricity for illuminating purposes, heat or motive power, nor the distribution of water for fire or domestic purposes, nor the use of the telegraph or the telephone, nor the retail sale of drugs and medicines, nor articles ordered by the prescription of a physician or mechanical appliances used by physicians or surgeons, nor the retail sale of tobacco in any of its forms by licensed innholders, common victualers, druggists, and news-dealers whose stores

Approved May 22, 1902.

Twenty-eight exceptions.

are open for the sale of newspapers every day in the week, nor the retail sale of ice-cream, soda water, and confectionery by licensed innholders and druggists, and by such licensed common victualers as are not also licensed to sell intoxicating liquors and who are not authorized to keep open their places of business on the Lord's day, nor the letting of horses and carriages or of yachts and boats, nor the running of steam ferry-boats on established routes, nor the running of street railway cars, nor the preparation, printing, and publication of newspapers, nor the sale and delivery of newspapers, nor the wholesale or retail sale and delivery of milk, nor the transportation of milk, nor the making of butter and cheese, nor the keeping open of public bath-houses, nor the making or selling by bakers or their employees before ten o'clock in the morning and between the hours of four o'clock and half past six o'clock in the evening, of bread or other food usually dealt in by them, nor the carrying on of the business of the bootblack before eleven o'clock in the forenoon.[1]

Sabbatarians exempt.

SECTION 4. Whoever conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall not be liable to the penalties of section 2 for performing secular business and labor on the Lord's day if he disturbs no other person.[2]

Approved June 9, 1904.

SECTION 5, PAGE 420. The provisions of the preceding sections shall not be held to prohibit the giving, being present at, or taking part in, on the Lord's day, a concert of sacred music, or an entertainment given in good faith by a religious or charitable society, in aid of a religious or charitable purpose, the entire proceeds of which, if any, less only the necessary and reasonable expenses, not to exceed twenty-five per cent of such proceeds, are to be devoted exclusively to a religious or charitable purpose, or a free open-air concert given by a city or town, or by license of the mayor and aldermen of a city or the selectmen of a town, upon a common, public park, street, or square.

SECTION 6. Whoever, keeping a house, shop, cellar, or place of public entertainment or refreshment, entertains therein on the Lord's day any persons other than travelers, strangers, or lodgers, or suf-

[1] Even though nearly everything is exempted, as here, by the very fact of saying, "We permit you to do all these things on Sunday," the authors of Sunday laws show that they claim jurisdiction over everything. Why not enlarge the list, and tell the people that they may comb their hair and eat their meals on Sunday? The Michigan Sunday law even permits the people to make "mutual promises of marriage" on Sunday.

[2] This expression, like many others running through these Sunday laws, points directly to the religious feature of the law. The Sabbatarian is allowed to work "if he disturbs no other person;" but the nullifidian is not, according to this law, allowed to work, even if he does not disturb any one. In other words, the law intends to *compel all to observe some Sabbath;* — the day of the dominant cult if they will, but if not, then of some minor sect! It would never do to allow the unbeliever, as we do the Christian, to use his time as he wills,— no, never! He *must* pay homage to some religion.

fers such persons on said day to abide or remain therein, or in the yards, orchards, or fields appertaining to the same, drinking or spending their time idly or at play, or in doing any secular business, shall be punished by a fine of not more than fifty dollars for each person so entertained or suffered so to abide or remain; and upon subsequent conviction, by a fine of not more than one hundred dollars; and if convicted three times, he shall thereafter be disqualified to hold a license. Entertainment and secular business.

SECTION 7. An innholder or other person who, being licensed to keep a place of public entertainment, entertains or suffers to remain or be in his house, yard, or other place appurtenant, any persons other than travelers, strangers, or lodgers in such house, drinking and spending their time there, on the Lord's day, or on the evening preceding the same, shall be punished by a fine of not more than five dollars for each offense.

SECTION 8. A civil process shall not be served or executed on the Lord's day, and such service if made shall be void, and the person who serves or executes it shall be liable in damages to the person aggrieved in like manner as if he had no such process. Civil process.

SECTION 9. Whoever, on the Lord's day, behaves rudely or indecently within the walls of any house of public worship shall be punished by a fine of not more than ten dollars. Rude behavior.

SECTION 10. Prosecutions for penalties incurred under the preceding provisions of this chapter shall be commenced within six months after the offense was committed.

SECTION 11. Sheriffs, constables, and grand jurors shall inquire into and inform of all offenses against the provisions of this chapter, and cause the same to be enforced. Officers to inform.

SECTION 12. Whoever, on the Lord's day, discharges any firearm for sport or in the pursuit of game, or attempts to take or catch any fish by using any hook, line, net, spear, or other implement, shall be punished by a fine of not more than ten dollars. Prosecutions under the provisions of this section shall be commenced within thirty days after the time the offense was committed. Shooting and fishing.

SECTION 13. Any innholder, common victualer, or person keeping or suffering to be kept in any place occupied by him implements such as are used in gaming, in order that the same may for hire, gain, or reward be used for purposes of amusement, who, on the Lord's day, uses or suffers to be used any such implements upon any part of his premises, shall for the first offense be punished by a fine of not more than three months; and for each subsequent offense by imprisonment for not more than one year; and in either case shall further recognize, with sufficient sureties, in a reasonable sum for his good behavior, and especially that he will not be guilty of any offense against the provisions of this section for three months after the date of his recognizance.

Steamboats and trains.

SECTION 14. The Board of Railroad Commissioners may authorize the running, on the Lord's day, of such steamboat lines and such trains upon any railroad, as, in the opinion of the board, the public necessity and convenience require, having regard to the due observance of the day.

Discretionary power conferred.

SECTION 15. The Board of Railroad Commissioners may, if in their opinion the public necessity, convenience, health, or welfare so requires, authorize the running of steamboats on the Lord's day for the entire year or any part thereof, upon such conditions as they deem judicious to prevent disorderly conduct or the disturbance of public worship; and may at any time revoke such authority.

SECTION 16. The Lord's day shall include the time from midnight to midnight.[1]

SECTION 17. The provisions of this chapter shall not constitute a defense to an action for a tort or injury suffered by a person on the Lord's day.

Approved March 22, 1904.

Hunting.

SECTION 1, PAGE 406. The Lord's day shall be close season. Whoever hunts or destroys birds, wild animals, or game of any kind on the Lord's day shall be liable to a penalty of not less than ten nor more than twenty dollars in addition to any penalties for taking, killing, or having in possession birds, wild animals, or game protected by law.

Approved April 21, 1905.

Fish and game.

SECTION 3 [*Of Additional Legislation*], PAGE 416. A license granted hereunder shall be revoked by the city or town clerk issuing the same in case the licensee is convicted of violation of the fish and game laws, or of hunting upon Sunday in violation of law.

Penalty.

SECTION 5. Whoever violates any provision of this act shall be punished by a fine of not less than ten nor more than fifty dollars.

Approved May 17, 1906.

Liquors on Lord's day.

SECTION 17, PAGE 424. Second, that spirituous or intoxicating liquor shall not be sold between the hours of eleven at night and six in the morning, or on the Lord's day; but if the licensee is also licensed as an innholder, he may between the hours of six in the morning and eleven at night on the Lord's day, supply such liquors to guests who have resorted to his inn for food or lodging. And, in the city of Boston, such licensed innholders may also, with the consent of the licensing authority and upon the payment of an additional fee of five hundred dollars, supply such liquors, between the hours of eleven and twelve at night, except on the Lord's day, to guests who have resorted to his inn for food or lodging, but only in dining-rooms; *Provided*, that the number of permits for selling during the additional hour aforesaid shall not exceed one for every twenty thousand or fraction thereof of the population as ascertained by the last preceding national or State census.

[1] The Bible says, "From even unto even, shall ye celebrate your Sabbath" (Lev. 23: 32), and defines even as the time of the setting of the sun. Mark 1: 32. The midnight idea of beginning the day is Roman, as are Sunday laws themselves.

SECTION 99, PAGE 892. Whoever willfully cuts down or destroys timber or wood standing or growing on the land of another, or carries away any kind of timber or wood cut down or lying on such land, or digs up or carries away stone, ore, gravel, clay, sand, turf, or mold from such land, or roots, nuts, berries, grapes, or fruit of any kind or any plant there being, or cuts down or carries away sedge, grass, hay, or any kind of corn, standing, growing, or being on such land, or cuts or takes therefrom any ferns, flowers, or shrubs, or carries away from a wharf or landing-place any goods in which he has no interest or property, without the license of the owner therof, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars, and if the offense is committed on the Lord's day or in disguise or secretly in the nighttime the imprisonment shall not be less than five days nor the fine less than five dollars.

Approved June 8, 1904.

Sunday depredations.

SECTION 106, PAGE 894. Whoever willfully, intentionally, and without right enters upon the orchard, garden, or other improved land of another with intent to cut, take, carry away, destroy, or injure the trees, grain, grass, hay, fruit, or vegetables there growing or being, shall be punished by imprisonment for not more than six months or by a fine of not more than five hundred dollars; and if the offense is committed on the Lord's day, or in disguise, or secretly in the nighttime, the imprisonment shall not be less than five days nor the fine less than five dollars.

Approved June 28, 1902.

Similar provision.

SECTION 172, PAGE 441. The mayor of a city or the selectmen of a town may, except as provided in section 46 of chapter 106, grant a license for theatrical exhibitions, public shows, public amusements, and exhibitions of every description to which admission is obtained upon payment of money or upon the delivery of any valuable thing, or by a ticket or voucher obtained for money or any valuable thing, upon such terms and conditions as they deem reasonable, and they may revoke or suspend such license at their pleasure; but they shall not grant a license for any such theatrical exhibitions, public shows, public amusements, or exhibitions of any description whatever to be held upon the Lord's day, except for those named in section 5 of chapter 98, and no such exhibition, show, or amusement mentioned in said section, except a concert of sacred music or a free open-air concert given by a city or town upon a common, public park, street, or square, shall be given without such license.

Approved April 26, 1905.

Paid shows.

Permissible Lord's day shows.

MICHIGAN.

[The Compiled Laws of the State of Michigan, 1897, volume ii, page 1843.]

SECTION 5912. No person shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, or be present at any dancing, or at any public diversion, show, or entertain-

Provision for Sunday observance.

ment, or take part in any sport, game, or play on the first day of the week. The foregoing provisions shall not apply to works of necessity and charity, nor to the making of mutual promises of marriage, nor to the solemnization of marriages. And every person so offending shall be punished by fine not exceeding ten dollars for each offense.

Penalty.

SECTION 5913. No tavern-keeper, retailer of spirituous liquors, or other person keeping a house of public entertainment, shall entertain any persons, not being travelers, strangers, or lodgers in his house, on the said first day of the week, or shall suffer any such persons on said day to abide or remain in his house, or in the buildings, yards, or orchards, or fields appertaining to the same, drinking, or spending their time idly, or at play, or in doing any secular business.

Entertainment of loafers prohibited.

SECTION 5914. Every person offending against any of the provisions of the last preceding section shall be punished by a fine not exceeding five dollars for each person so entertained, or suffered so to abide or remain; and upon any conviction after the first, such offender shall be punished by a fine not exceeding ten dollars; and if convicted three times, he shall be afterwards incapable of holding a license; and every person so abiding or drinking shall be punished by a fine not exceeding five dollars.

Penalty.

SECTION 5915. No person shall be present at any game, sport, play, or public diversion, or resort to any public assembly, excepting meetings for religious worship or moral instruction, or concerts of sacred music, upon the evening of the said first day of the week; and every person so offending shall be punished by a fine not exceeding five dollars for each offense.

Persons to attend religious meetings only.

SECTION 5916. No person shall serve or execute any civil process from midnight preceding to midnight following the said first day of the week; but such service shall be void, and the person serving or executing such process shall be liable in damages to the party aggrieved, in like manner as if he had not had any such process.

SECTION 5917. If any person shall, on the said first day of the week, by rude and indecent behavior, or in any other way, intentionally interrupt or disturb any assembly of people met for the purpose of worshiping God, he shall be punished by a fine not less than two nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days.

Indecent behavior prohibited on Sunday.

SECTION 5918. No person who conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be liable to the penalties provided in this chapter, for performing secular business or labor on the said first day of the week, provided he disturb no other person.

Sabbatarians exempted.

SECTION 5919. For the purposes of the provisions of this chapter, the said first day of the week shall be understood to include all the time between the midnight preceding and the midnight following the

said day; and no prosecution for any fine or penalty incurred under any of the preceding provisions of this chapter shall be commenced after the expiration of three months from the time when the offense shall have been committed.

[Compiled Laws of Michigan, 1897, volume i, page 359.]

Relative to suits against Sabbatarians.

SECTION 796. That no person who conscientiously believes the seventh day of the week ought to be observed as the Sabbath, and actually refrains from secular business and labor on that day, shall be compelled to defend any civil suit in the justice's courts of this State on that day.

Provisions for Sabbatarians.

SECTION 797. Whenever any person, as aforesaid, shall be served with any process returnable on the seventh day of the week, such person may make affidavit before any person authorized to administer oaths, setting forth the fact that a summons has been issued, naming the day when the same was issued, when returnable, by whom issued, and in whose favor, and against whom the same was issued; and also that said affiant conscientiously believes that the seventh day of the week ought to be observed as the Sabbath, and that the said affiant actually refrains from secular business and labor on said day, and may at any time after service of such process, and before the return day thereof, file such affidavit with the justice before whom said cause shall be pending.

SECTION 798. It shall be the duty of any justice of the peace before whom any cause shall be pending, in which such affidavit shall be filed regularly, to call such cause on the return day thereof, as in other cases, and upon his own motion to adjourn the same without pleadings, to such time as he shall see fit; *Provided,* the same shall not be adjourned to the seventh or the first day of the week; *And provided also,* that the said cause shall not be so adjourned more than ten days, for the cause aforesaid.

Barbering.

SECTION 5920. (1) That it shall be unlawful for any person or persons to carry on or engage in the art or calling of hair cutting, shaving, hair dressing and shampooing, or in any work pertaining to the trade or business of a barber, on the first day of the week, commonly called Sunday, except such person or persons shall be employed to exercise such art or calling in relation to a deceased person on said day.

Sabbatarians excepted.

SECTION 5921. (2) That it shall be unlawful for any such person or persons to keep open their shops or places of business aforesaid, on said first day of the week, commonly called Sunday, for any of the purposes mentioned in section 1 of this act; *Provided, however,* that nothing in this act shall apply to persons who conscientiously believe the seventh day of the week should be observed as the Sabbath and who actually refrain from secular business on that day.

Penalty.

SECTION 5922. (3) Every person offending against the provisions of this act, shall, upon conviction thereof, be punished by a fine not

less than ten dollars nor more than twenty-five dollars for each offense or by imprisonment in the county jail for not more than thirty days, or by both such fine and imprisonment in the discretion of the court.

Cities to regulate.

SECTION 3107. Every city incorporated under the provisions of this act, shall, in addition to such other powers as are herein conferred, have the general powers and authority in this chapter mentioned; and the council may pass such ordinances in relation thereto, and for the exercise of the same, as they may deem proper, namely;

. . . . . .

Sunday disturbance.

Ninth, To prevent and punish violations of the Sabbath day, and the disturbance of any religious meeting, congregation, or society, or other public meeting assembled for any lawful purposes; and to require all places of business to be closed on the Sabbath day.

[Volume ii, page 1700.]

Saloons and restaurants closed.

SECTION 5395. All saloons, restaurants, bars, in taverns or elsewhere, and all other places, except drug stores, where any of the liquors mentioned in this act are sold, or kept for sale, either at wholesale or retail, shall be closed on the first day of the week, commonly called Sunday, on all election days, on all legal holidays, and until seven o'clock of the following morning. . . .

Misdemeanor.

SECTION 5396. Any person who shall violate any of the provisions of the five preceding sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 7 of this act.[1]

[From Public Acts of Michigan, 1905, page 86.]

Approved April 19, 1905.

SECTION 1. It shall be unlawful for any person to hunt for game with firearms, dogs, or otherwise on Sunday on any lands or premises of another in Oakland county of this State, without consent of the owner or lessee of such land or premises.

Hunting.

Trespassing.

SECTION 2. If any person is found upon the lands or premises of another, without the consent of the owner or lessee of such lands or premises, with firearms in his possession on Sunday, it shall be deemed *prima facie* evidence of a violation of this act.

Penalty.

SECTION 3. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not more than twenty-five dollars and costs of prosecution, or to imprisonment in the county jail or not to exceed thirty days, or both such fine and imprisonment in the discretion of the court; *Provided, however,* that no complaint shall be made against any person for the violation of any of the provisions of this act, un-

Penalty.

[1] Section 7 provides the following penalty: "A fine of not more than two hundred dollars and costs of prosecution, or imprisonment in the county jail not less than ten days nor more than ninety days, or both such fine and imprisonment in the discretion of the court."

less the same shall be made by the owner or lessee of the lands or premises so trespassed upon; *Provided further,* that any officer duly authorized to make an arrest, including the State game and fish warden and his deputies, may arrest without warrant any person caught by him in the act of violating any of the provisions of this act, when requested so to do by the owner or lessee of the lands or premises trespassed upon. Such arrest may be made on Sunday, in which case the person arrested may be taken before a justice of the peace having jurisdiction, and proceeded against as soon as may be on a week day following the arrest.[1]

Arrest on Sunday.

SECTION 5. The word "Sunday" as used in this act shall be construed to mean the first day of the week.

Sunday defined.

MINNESOTA.

[Revised Laws of Minnesota, 1905, page 1049.]

SABBATH-BREAKING, ETC.

SECTION 4980. DEFINITIONS. The law prohibits the doing on the first day of the week of the certain acts in section 4981, which are serious interruptions of the repose and religious liberty of the community, and the doing of any of said acts on that day shall constitute Sabbath-breaking. Under the term "day" as used in this section and section 4981 is included all the time from midnight to midnight.

Definitions.

SECTION 4981. THINGS PROHIBITED — EXCEPTIONS. All hunting, shooting, fishing, playing, horse-racing, gaming, and other public sports, exercises, and shows; all noises disturbing the peace of the day; all trades, manufactures, and mechanical employments, except works of necessity performed in an orderly manner so as not to interfere with the repose and religious liberty of the community; all public selling or offering for sale of property; and all other labor except works of necessity and charity, are prohibited on the Sabbath day; *Provided,* that meals to be served upon the premises or elsewhere by caterers, prepared tobacco in places other than where intoxicating liquors are kept for sale, fruits, confectionery, newspapers, drugs, medicines, and surgical appliances, may be sold in a quiet and orderly manner. In works of necessity or charity is included whatever is needful during the day for good order, health, or comfort of the community; but keeping open a barber shop or shaving and hair cutting shall not be deemed works of necessity or charity, and nothing in this section shall be construed to permit the selling of uncooked meats, groceries, clothing, boots, or shoes.

General provisions.

Barber shops closed.

SECTION 4982. PUNISHMENT. Every person who breaks the Sabbath shall be guilty of a misdemeanor, and punished by a fine of not

[1] Act 273, page 419, of the Public Acts of Michigan, 1905, makes a similar provision for the county of Livingston.

Penalty.

less than one dollar nor more than ten dollars, or by imprisonment in the county jail for not more than five days; but it shall be a sufficient defense to a prosecution for Sabbath-breaking that the defendant uniformly keeps another day of the week as holy time, and that the act complained of was done in such manner as not to disturb others in the observance of the Sabbath.

Sabbatarians exempt.

SECTION 4983. SERVICE OF PROCESS ON THE SABBATH PROHIBITED. Every service of legal process upon the Sabbath day, except in case of a breach or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or where such service is expressly authorized by statute, is hereby prohibited.

Legal service.

SECTION 4984. PREVENTING RELIGIOUS ACT. Every person who, by threats or violence, shall willfully prevent another person performing any lawful act enjoined upon or recommended to him by the religion which he professes, shall be guilty of a misdemeanor.

No religious compulsion.

MISSISSIPPI.

[Mississippi Code of 1906, page 478.]

SECTION 1366. SABBATH; VIOLATIONS OF GENERALLY. If any person, on the first day of the week, commonly called Sunday, shall himself labor at his own or any other trade, calling, or business, or shall employ his apprentice or servant in labor or other business, except it be in the ordinary household offices of daily necessity, or other work of necessity or charity, he shall, on conviction, be fined not more than twenty dollars for every offense, deeming every apprentice or servant so employed as constituting a distinct offense; but nothing in this section shall apply to labor on railroads or steamboats, telegraph or telephone lines, street railways, or in the business of a livery stable, meat market, or ice house.

Sunday labor prohibited.

SECTION 1367. THE SAME; MERCHANTS, OTHER THAN DRUGGISTS, NOT TO OPEN STORE, ETC. A merchant, shopkeeper, or other person, shall not keep open store, or dispose of any wares or merchandise, goods, or chattels, on Sunday, or sell or barter the same; and every person so offending, shall, on conviction, be fined not more than twenty dollars for every such offense; but this shall not apply to apothecaries or druggists who may open their stores for the sale of medicines.

Sunday selling.

SECTION 1368. THE SAME; FARCES, PLAYS, GAMES, ETC. If any person shall engage in, show forth, exhibit, act, represent, perform, or cause to be shown forth, acted, represented, or performed, any interludes, farces, or plays of any kind, or any games, tricks, ball-playing of any kind, juggling, sleight of hand, or feats of dexterity, agility of body, or any bear-baiting or bull-fighting, horse-racing, or cock-fighting, or any such like show or exhibit whatsoever, on Sunday, every person so offending shall be fined not more than fifty dollars.

Amusements.

SECTION 1369. THE SAME; HUNTING OR FISHING. If any person shall hunt with a gun or with dogs, or fish in any way on Sunday, he shall, on conviction, be fined not less than five dollars nor more than twenty dollars. Hunting and fishing.

SECTION 1760, PAGE 565. THE SAME; DRAMSHOPS NOT TO BE KEPT OPEN OR LIQUOR SOLD ON SUNDAY. It shall not be lawful for a person having a license to sell vinous or spirituous liquors, to keep open a dramshop, bar, or place where such liquors are sold, or to sell any such liquors, on the first day of the week, commonly called Sunday; and a person so offending shall be liable to a fine of not less than fifty dollars nor more than one hundred dollars for each offense, or shall be imprisoned therefor not exceeding thirty days in the county jail, or both. Liquor selling.

MISSOURI.

[Revised Statutes of the State of Missouri, 1899, volume i, page 623.]

SECTION 2240. SABBATH-BREAKING. Every person who shall either labor himself, or compel or permit his apprentice or servant, or any other person under his charge or control, to labor or perform any work other than the household offices of daily necessity, or other works of necessity or charity, or shall be guilty of hunting game or shooting on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars. Laboring on Sunday a misdemeanor. Penalty.

SECTION 2241. LAST SECTION CONSTRUED. The last section shall not extend to any person who is a member of a religious society by whom any other than the first day of the week is observed as a Sabbath, so that he observe such Sabbath, nor to prohibit any ferryman from crossing passengers on any day of the week; nor shall said last section be extended or construed to be an excuse or defense in any suit for the recovery of damages or penalties from any person, company, or corporation voluntarily contracting or engaging in business on Sunday. Exceptions.

SECTION 2242. HORSE-RACING, ETC., ON SUNDAY. Every person who shall be convicted of horse-racing, cock fighting, or playing at cards or games of any kind, on the first day of the week, commonly called Sunday, shall be deemed guilty of a misdemeanor, and fined not exceeding fifty dollars. Horse-racing on Sunday a misdemeanor.

SECTION 2243. SELLING GOODS ON SUNDAY. Every person who shall expose to sale any goods, wares, or merchandise, or shall keep open any ale or porter house, grocery, or tippling-shop, or shall sell or retail any fermented or distilled liquor on the first day of the week, commonly called Sunday, shall, on conviction, be adjudged guilty of a misdemeanor, and fined not exceeding fifty dollars. Trafficking on Sunday a misdemeanor.

SECTION 2244. LAST SECTION CONSTRUED. The last section shall Exceptions.

not be construed to prevent the sale of any drugs or medicines, provisions, or other articles of immediate necessity.

Barbering.

SECTION 2245. BARBERING ON SUNDAY. That it shall be a misdemeanor for any person to carry on the business of barbering on Sunday.

Penalty.

SECTION 2246. PENALTY. That any one found guilty of violating section 2245 of this article shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned in the county jail not less than fifteen nor more than thirty days, or both, in the discretion of the court.

Saloons to be closed.

SECTION 3011. KEEPING OPEN ON SUNDAY. Any person having a license as a dramshop-keeper, who shall keep open such dramshop, or shall sell, give away, or otherwise dispose of, or suffer the same to be done upon or about his premises, any intoxicating liquors, in any quantity, on the first day of the week, commonly called Sunday, or upon the day of any general election in this State, shall, upon conviction thereof, be punished by a fine not less than fifty dollars nor more than two hundred dollars, shall forfeit such license, and shall not be again allowed to obtain a license to keep a dramshop for the term of two years next thereafter.

MONTANA.

[Codes and Statutes of Montana, 1895, volume ii, page 844.]

Sunday amusements.

SECTION 530. Every person who on Sunday, or the first day of the week, keeps open or maintains or aids in opening or maintaining any theater, play-house, dance-house, race-track, gambling-house, concert saloon, or variety hall, is guilty of a misdemeanor.

Sunday barbering.

SECTION 531. It is unlawful to conduct the business of hair cutting, shaving, or shampooing, or to open barber shops for the doing of such business, on Sunday.

Penalty.

SECTION 532. Any person violating the provisions of this act is guilty of a misdemeanor, and upon conviction thereof shall be fined for the first offense not less than fifteen dollars and not to exceed fifty dollars, and for any subsequent violation, a fine not less than twenty-five dollars and not exceeding one hundred dollars shall be imposed.

NEBRASKA.

[Cobbey's Annotated Statutes of Nebraska, 1907, volume i, page 867.]

Acts prohibited on Sunday.

SECTION 2338. SABBATH-BREAKING. If any person of the age of fourteen years or upward, shall be found on the first day of the week, commonly called Sunday, sporting, rioting, quarreling, hunting, fishing, or shooting, he or she shall be fined in a sum not exceeding

twenty dollars, or be confined in the county jail for a term not exceeding twenty days, or both, at the discretion of the court. And if any person of the age of fourteen years or upward shall be found on the first day of the week, commonly called Sunday, at common labor (work of necessity and charity only excepted), he or she shall be fined in any sum not exceeding five dollars nor less than one dollar; *Provided,* nothing herein contained in relation to common labor on said first day of the week, commonly called Sunday, shall be construed to extend to those who conscientiously do observe the seventh day of the week as the Sabbath, nor to prevent families emigrating from traveling, watermen from landing their passengers, superintendents or keepers of toll-bridges or toll-gates from attending and superintending the same, or ferrymen from conveying travelers over the waters, or persons moving their families on such days, or to prevent railroad companies from running necessary trains.

Penalty.

Secular labor prohibited.

Sabbatarians exempt.

SECTION 7164. Every person who shall sell or give away any malt, spirituous, and vinous liquors on the day of any general or special election, or at any time during the first day of the week, commonly called Sunday, shall forfeit and pay for every such offense, the sum of one hundred dollars.

Restrictions on the liquor traffic.

NEVADA.

[Compiled Laws of Nevada, 1900, page 963.]

AN ACT FOR THE BETTER OBSERVANCE OF THE LORD'S DAY.

Approved Nov. 21, 1861.

SECTION 4958. No person shall keep open any play-house or theater, race ground, cock pit, or play at any game of chance or gain, or engage in any noisy amusement, on the first day of the week, commonly called Lord's day.

Sunday amusements prohibited.

SECTION 4959. No judicial business shall be transacted by any court except deliberations of a jury who have received a case on a week day, so-called, and who may receive further instructions from the court, at their request, or deliver their verdict; nor any civil process be served by any certifying or attesting officer, or any record made by any legally appointed or elected officer, upon the first day of the week, commonly called the Lord's day; *Provided,* that criminal process may issue for the apprehension of any person charged with crime, and criminal examination be proceeded with.

Enforcement of Sunday as a *dies non.*

SECTION 4960. Any person or persons violating the provisions of the two preceding sections of this act shall be punished, on conviction thereof, by a fine of not less than thirty dollars nor more than two hundred and fifty dollars, for each offense.

Penalty.

SECTION 4961. Justices of the peace may have jurisdiction of all complaints arising under the aforesaid act.

Jurisdiction.

SECTION 4962. On complaint of any person, before a justice of the peace, the person or persons found guilty of any offenses specified in

this act shall be fined as aforesaid, to be paid to the treasurer of the territory, for the benefit of common schools; and the offender shall, in addition to the said fine and the costs of prosecution, give bonds, with two good and sufficient sureties, in the sum of not less than two hundred dollars nor more than five hundred dollars, for good behavior during any time within the discretion of the court, and stand committed till the whole order is complied with, and the fine be paid.

Penalties.

POWERS AND DUTIES OF METROPOLITAN CITIES.

SECTION 8086. SUPPRESS INDECENCIES. (Pertaining to Lincoln.) To restrain, prohibit, and suppress unlicensed tippling-shops, billiard-tables, bowling-alleys, and houses of prostitution, opium-joints, dens, and other disorderly houses and practices, games, and gambling-houses, desecration of the Sabbath day, commonly called Sunday, and to prohibit all public amusements, shows, exhibitions, or ordinary business pursuits on said day, and all lotteries and fraudulent devices and practices for the purpose of obtaining money or property, and all shooting galleries, and all kinds of public indecencies.

City of Lincoln.

SECTION 7635. SUPPRESS DISORDERLY PLACES. (Pertaining to Omaha.) To prohibit, restrain, and suppress tippling-shops, houses of prostitution, opium-joints or dens, gambling-houses, prize fighting, dog fighting, cock fighting, and other disorderly houses and practices, all games and gambling, and desecration of the Sabbath (commonly called Sunday), and all kinds of indecencies; also to regulate and license or prohibit the keeping and use of billiard-tables, tenpins, or ball alleys, shooting-galleries, and other similar places of amusement, and to prohibit and suppress, by ordinance, all lotteries and gift enterprises of all kinds under whatsoever name carried on.

City of Omaha.

POWERS AND DUTIES OF CITIES OF SECOND CLASS.

SECTION 8847. DESECRATION OF SABBATH. To prevent any desecration of the Sabbath day, commonly called Sunday, and to prohibit public amusements, shows, exhibitions, or ordinary business pursuits upon said day.

Amusements.

NEW HAMPSHIRE.

[The Public Statutes of the State of New Hampshire, 1900, chapter 271, page 819.]

OFFENSES AGAINST MORALITY AND RELIGION.

SECTION 3. No person shall do any work, business, or labor of his secular calling, to the disturbance of others, on the first day of the week, commonly called the Lord's day, except works of necessity and mercy, and the making of necessary repairs upon mills and factories which could not be made otherwise without loss to operatives; and no person shall engage in any play, game, or sport on that day.

Secular labor prohibited.

SECTION 4. No person shall, on the Lord's day, discharge any firearms for sport or in the pursuit of game, nor carry any firearm in the field, highway, or private way, while in the pursuit of game, or with intent to discharge the same in sport. Sunday shooting prohibited.

SECTION 5. No person shall keep his shop, warehouse, cellar, restaurant, or workshop open for the reception of company, or shall sell or expose for sale any merchandise whatsoever on the Lord's day; but this section shall not be construed to prevent the entertainment of boarders, nor the sale of milk, bread, and other necessaries of life, nor drugs and medicines. Sunday entertainment prohibited.

SECTION 6. No person shall, on the Lord's day, within the walls of any house of public worship or near the same, behave rudely or indecently, either in the time of public service or between the forenoon and afternoon services.[1] Rude behavior prohibited on Sunday.

SECTION 10. If any person shall be guilty of a breach of any provision of this chapter, he shall be fined not exceeding ten dollars or be imprisoned not exceeding thirty days, or both, unless otherwise specially provided, and he may be required to give sureties to be of good behavior for one year.[2] Penalty.

NEW JERSEY.[3]

[General Statutes of New Jersey, 1895, volume iii, page 3707.]

SECTION 1. That no traveling, worldly employment, or business, ordinary or servile labor or work, either upon land or water (works of necessity and charity excepted), nor shooting, fishing (not including fishing with a seine or net, which is hereafter provided for), sporting, hunting, gunning, racing, or frequenting of tippling-houses, or any interludes or plays, dancing, singing, fiddling, or other music for the sake of merriment, nor any playing at foot-ball, fives, ninepins, bowls, long-bullets, or quoits, nor any other kind of playing, sports, pastimes, Worldly diversions prohibited on Sunday.

[1] The injustice and favoritism of Sunday laws are evident from this and similar provisions in these Sunday statutes. Persons are prohibited from behaving "rudely or indecently" "within the walls of any house of public worship, or near the same" *on Sunday!* Why not, pray, on *every* day of the week? Are we to conclude that persons who hold meetings on other days are to be without protection? See section 505, page 632.

[2] Section 1 of chapter 271, reads as follows: "If any person shall openly deny the being of a God, or willfully blaspheme the name of God, Jesus Christ, or of the Holy Ghost, or shall curse or reproach the word of God contained in the canonical books of the Old and New Testaments, he shall be fined not exceeding two hundred dollars, and may be holden to recognize with securities for his good behavior for a term not exceeding one year." This plainly reveals the religious character of the whole.

[3] New Jersey, one of the smallest States in the Union, has the longest Sunday law, its provisions occupying nearly eight pages of this book. These provisions are but the relics and expansion of the old acts of 1693 and 1704. See *ante* pages 54, 55.

or diversions, shall be done, performed, used, or practiced by any person or persons within this State, on the Christian Sabbath, or first day of the week, commonly called Sunday; and that every person, being of the age of fourteen years or upwards, offending in the premises, shall for every such offense forfeit and pay to the use of the poor of the township in which such offense shall be committed, the sum of one dollar; and that no person shall cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, meat, fish, goods, or chattels, upon the first day of the week, commonly called Sunday, or sell or barter the same, upon pain that every person so offending shall forfeit and pay to the use of the poor of the township where such offense shall be committed, the sum of two dollars; and if any person offending in any of the premises shall be thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offense shall have been committed, commanding him to levy the said forfeitures or penalties by distress and sale of the goods and chattels of such offenders, and to pay the money therefrom arising to the overseers of the poor of the township where the said offense or offenses shall have been committed, for the use of the poor thereof; and in case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be committed to the common jail of the said county, or to the jail of any city or town corporate within the same, for a term not exceeding ten days, to be certainly expressed in said warrant; *And further,* that if any person shall be found fishing, sporting, playing, dancing, fiddling, shooting, hunting, gunning, traveling, or going to or returning from any market or landing with carts, wagons, or sleds, or behaving in a disorderly manner, on the first day of the week, called Sunday, it shall be lawful for any constable, or other citizen, to stop every person so offending, and to detain him or her till the next day, to be dealt with according to law; *Provided always,* that no person going to or returning from any church or place of worship, within the distance of twenty miles, or going to call a physician, surgeon, or midwife, or carrying mail to or from any post-office, or going express by order of any public officer, shall be considered as traveling within the meaning of this act; *And provided also,* that nothing in this act contained shall be construed to prohibit the dressing of victuals in private families, or in lodging-houses, inns, and other houses of entertainment for the use of sojourners, travelers, or strangers; *And provided further,* that it shall and may be lawful for any railroad company in this State to run one passenger train each way over their roads on Sunday for the accommodation of the citizens of this State.

Penalty.

Trafficking prohibited.

Sports prohibited.

Exceptions.

Sunday fishing prohibited.

SECTION 2. No person shall on the first day of the week, called Sunday, cast, draw, or make use of any seine or net, for the purpose of catching fish in any pond, lake, stream, or river, within the territorial limits or jurisdiction of this State, or be aiding or assisting therein; and every person offending in the premises shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses upon oath or affirmation, forfeit and pay the sum of fourteen dollars for every such offense; and in case of non-payment of the said forfeiture, then the said justice before whom such conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county in which the offense shall have been committed, commanding him to levy the said forfeiture or penalty by distress and sale of the goods and chattels of such offender and to pay the money therefrom arising to the overseers of the poor of the township where the said offense shall have been committed, for the use of the poor thereof; and for want of goods and chattels whereby to make such distress, to convey the body of the said offender to the common jail of the county, or the jail of any city or town corporate within the same, there to remain in safe custody until the said forfeiture, with the costs of prosecution, shall be fully paid, or until such offender shall be delivered by due course of law.

Penalty.

Sunday stages prohibited.

SECTION 3. If any stage or stages shall be driven through any part of this State on the first day of the week, called Sunday, except sufficient reason shall be offered to show that it be done in cases of necessity or mercy, or in case of carrying the mail to or from any post-office, the driver or drivers, proprietor, or proprietors of such stage or stages, shall, on being thereof convicted before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or testimony of any witness or witnesses, forfeit and pay the sum of eight dollars for every such offense; and in case of non-payment of the said forfeiture or penalty, then the same shall be levied, recovered, and applied in the manner and form prescribed in and by the second section of this act; and every justice of the peace in this State is hereby empowered and required, upon his personal knowledge or view or other due information, of any stage or stages being driven or run through any part of this State as aforesaid, to stop and detain the same, or order and direct the same to be stopped and detained, at the cost and expense of the proprietor or proprietors of such stage or stages, until the following day, and then to be dealt with as hereinbefore is directed.

Penalty.

Duties of justices.

Sunday traveling prohibited.

SECTION 4. No wagoner, carter, drayman, drover, butcher, or any of his or their servants, shall ply or travel with his or their wagons, carts, or drays, or shall load or unload any goods, wares, merchandise, or produce, or drive cattle, sheep, or swine in any part of the State,

Penalty.

on the first day of the week, called Sunday, under the penalty of two dollars for every offense, to be levied, recovered, and applied in the manner and form prescribed in the second section of this act.

Freight transportation prohibited.

SECTION 13. No transportation of freight, excepting milk, or any public highway, railroad, or canal, shall be done or allowed by any person or persons within this State, on the first day of the week, commonly called the Christian Sabbath; *Providing,* that nothing in this act contained shall be construed so as to prevent the transportation of the United States mail by railroad or on the public highways, or to the regular trips of ferry-boats within the State or between this and another State.

Disturbance of meetings prohibited on Sunday.

SECTION 17. If any person or persons shall disturb or interrupt any religious meeting, as aforesaid, on the first day of the week, called Sunday, it shall be lawful for any constable or member of the meeting, and a citizen or freeholder as aforesaid, to apprehend such person or persons immediately, and detain him or them until the next day, then to be dealt with according to law, unless said offender or offenders shall give sufficient security before some magistrate, to appear at any time and place that he may direct, to answer the charge preferred against him or them, in which case it shall be lawful for said magistrate to discharge such offender or offenders.

SECTION 23. No person shall be prosecuted or troubled for any offense against this act, unless the same be proved or prosecuted within thirty days after the commission of such offense.

SECTION 24. If any suit or action shall be commenced or brought against any justice of the peace, constable, or other officer or person whatsoever, for doing, or causing to be done, anything in pursuance of this act, concerning any of the said offenses, the defendant in such action or suit may plead the general issue, and give the special matter in evidence; and if, in any such action or suit, a verdict shall be given for the defendant, or the plaintiff become nonsuit, or discontinue his action, then the defendant shall have treble costs.

Jury demandable.

SECTION 25. In every complaint or information which shall be made or brought before any justice of the peace, under and by virtue of this act, it shall and may be lawful for the person charged in such complaint or information, after he has appeared thereto, and before the said justice has proceeded to inquire into the merits of the said complaint or information, to demand a trial by jury; and thereupon a venire shall be issued to summon a jury of six men to try whether the said person so charged is guilty or not guilty of the offense charged against him in said complaint or information; it shall be the duty of the said justice to issue the said venire, and to direct a return thereof to be to him made, and to proceed therein as in other cases of trials by jury; *Provided,* that the costs of the justice and constable upon the said venire, and costs of the said jury, and of swearing and attending the same, shall in all cases be paid by the person

demanding the said jury; *And provided also,* that this act shall not extend to any case in which any justice of the peace is authorized by this act to convict upon his own view or personal knowledge.

Penalties.

SECTION 29. Every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offense forfeit and pay to the use of the public schools of the township where such offense shall be committed, the sum of twenty dollars; and if any person offending in any of the premises, shall be thereof convicted, before any justice of the peace for the county where the offense shall be committed, upon the view of the said justice, or confession of the party offending, or proof of any witness or witnesses, on oath or affirmation, then the said justice before whom the said conviction shall be had, shall direct and send his warrant, under his hand and seal, to some constable of the county where the offense shall have been committed, commanding him to levy the said penalty or penalties, by distress and sale of the goods and chattels of such offender, and to pay the money therefrom arising to the collector of the township where the offense or offenses shall have been committed, for the use of the public schools thereof.

Imprisonment.

SECTION 30. In case no such distress can be had, then every such offender shall, by warrant under the hand and seal of the said justice, be committed to the common jail of the said county, city, or town corporate, within the same, for a term not exceeding ten days, to be certainly expressed in said warrant.

Duties of justices.

SECTION 31. Every justice of the peace in this State is hereby empowered and required, upon his personal knowledge or view, or other due information, of any canal-boat, or railroad car transporting freight through any part of this State, as aforesaid, he shall be authorized and required to stop and detain the same, or order the same to be stopped and detained, at the cost and expense of the proprietor or proprietors of such canal-boat or railroad car, until the following day, and then to be dealt with as hereinbefore is directed.

SECTION 32. This shall apply also to cattle, sheep, and hogs being driven to market on the Sabbath day.

Sabbatarians exempted.

SECTION 33. Every inhabitant of this State who religiously observes the seventh day of the week as the Sabbath, shall be exempt from answering to any process, in law or equity, either as defendant, witness, or juror, except in criminal cases; likewise from executing, on the said day, the duties of any post or office to which he may be appointed or commissioned, except when the interest of the State may absolutely require it, and shall also be exempt from working on the highways and doing any militia duty on that day, except when in actual service.

SECTION 34. If any person, charged with having labored or worked on the first day of the week, commonly called Sunday, shall be brought before a justice of the peace to answer the information and

charge thereof, and shall then and there prove, to the satisfaction of the said justice, that he or she uniformly keeps the seventh day of the week as the Sabbath, and habitually abstains from following his or her usual occupation or business, and from all recreation, and devotes the day to the exercise of religious worship, then such defendant shall be discharged; *Provided always,* that the work or labor for which such person is informed against, was done and performed in his or her dwelling-house or work-shop, or on his or her premises or plantation, and that such work or labor has not disturbed other persons in the observance of the first day of the week as the Sabbath; *And provided also,* that nothing in this section contained shall be construed to allow any such person to openly expose to sale any goods, wares, merchandise, or other article or thing whatsoever in the line of his or her business or occupation.

Restrictions on Sabbatarians.

[Volume i, page 342.]

SECTION 2. That within the limits of the said premises the said board of trustees, directors, managers, commissioners, or other corporate authorities shall have power, by ordinance or otherwise, to regulate and restrain the running of any railroad train, locomotive, or cars upon any railroad track within said premises upon the first day of the week, commonly called Sunday, and if any corporation, person, or individual shall, without the written consent of the said trustees, directors, managers, commissioners, or other corporate authorities, run, operate, or cause to be run or operated over any railroad track within said premises, any railroad train, locomotive, or cars, whether operated by steam, horse, or other power, upon the first day of the week, commonly called Sunday, such corporation, individual, or person so offending shall forfeit and pay to the said trustees, directors, managers, commissioners, or other corporate authorities, for each and every of the said acts, the sum of five hundred dollars, to be recovered with costs of the suit by the said trustees, directors, managers, commissioners, or other corporate authorities in an action of trespass on the case, in the circuit court of the county in which such act was committed; in said action it shall be sufficient to declare general, and give notice of special matter, and execution may issue thereon as in other cases; one half of any penalty thus collected shall, after deducting costs of collection, be paid to the overseer of the poor of the county or township wherein such act was committed; *Provided,* that this act shall not prevent the running of any railroad train, locomotive, or cars through said premises to any other terminal point; *And provided further,* that nothing in this act contained shall be construed to prevent the running of any railroad train, locomotive, or cars at any time over any railroad heretofore or hereafter construed or located.

Railroad work prohibited.

Exceptions.

SECTION 3. That the said trustees, directors, managers, commissioners, or other corporate authorities, shall have power, by ordi-

nance or otherwise, to regulate and restrain, within the limits of the said premises, or upon any pier or landing-place adjacent thereto, the carrying of any person by means of any boat or vessel of any kind to and from said premises, piers, or landing-place upon the first day of the week, commonly called Sunday, and to regulate and restrain the landing on said premises, by either public or private conveyance, of any person on the first day of the week, commonly called Sunday, except on errands of mercy, sickness, or death, and to regulate and restrain the manufacture and sale of tobacco in any of its forms within said premises; and if any person shall, without the written license of the said trustees, directors, managers, commissioners, or other corporate authorities first obtained, commit any of the acts in this section named, he shall forfeit and pay to the said trustees, directors, managers, commissioners, or other corporate authorities a penalty of five dollars for each and every offense, and for each and every person so landed or carried, to be recovered, with costs of prosecution, in the same manner and by the same proceedings as are mentioned and described in the first section of this act.

Transportation on water prohibited on Sunday.

SECTION 4. That nothing in this act contained shall be construed as in any way limiting or abridging any of the rights, powers, and privileges conferred by the act to which this is a supplement, or by other acts, upon any board of trustees, directors, commissioners, or other corporate authorities of any incorporated camp meeting association or sea-side resort.

[General Statutes of New Jersey, 1895, volume ii, page 1799.]

SECTION 13. That in addition to the penalties imposed in section 12 of this act [fifty dollars and costs] if any person or persons shall sell any of the liquors aforesaid, without license first had and obtained according to this act, or shall sell on Sunday, then such person or persons shall be held as a keeper or keepers of disorderly houses, and shall be liable to indictment as keepers of disorderly houses, and upon conviction shall be subject to like pains and penalties as are now imposed by law on keepers of gambling-houses, houses of prostitution, and other common nuisances.

Liquors on Sunday.

[Volume ii, page 1589.]

SECTION 3. That it shall be unlawful for any person or persons to cast, draw, drift, anchor, set, stake, or otherwise make use of any gilling net, seine, shore net, drift net, eel pots, or any kind of net for the purpose of catching fish in the Delaware river, from sunset on Saturday night until twelve o'clock on Sunday night of each and every week; and the person or persons so offending shall forfeit and pay the sum of one hundred dollars, together with the costs of suit for each and every offense.

Fishing.

[Volume ii, page 1567.]

Section 1. That from and after the passing of this act, if any person or persons, whomsoever, shall cast, draw, or in anywise make use of any seine or net in the river Delaware, within the jurisdiction of this State, from sunset on Saturday until sunrise on Monday of each and every week, he, she, or they so offending shall forfeit and pay the sum of two hundred and fifty dollars, together with costs of suit, for each and every offense; *Provided,* that nothing in this section contained, shall prevent the owners or occupiers of eddy fisheries above the tide water, from beginning to fish at twelve o'clock on Saturday night.

Fine.

[Volume ii, page 1569.]

Section 1. That from and after the passing of this act, if any person or persons whomsoever, shall cast or lay out any seine or net in the river Delaware, within the concurrent jurisdiction of this State and the State of Pennsylvania, from sunset on Saturday until twelve o'clock on Sunday night of each and every week, he, she, or they so offending shall forfeit and pay the sum of one hundred dollars, together with costs of suit, for each and every offense.

Fine.

[Volume ii, page 1583.]

Section 15. That it shall be unlawful to hunt with a gun, or with a dog, or with firearms or weapons, or to carry a gun in the fields or in the woods on the Sabbath day (commonly called Sunday), under a penalty of twenty dollars for each and every offense.

Sunday hunting.

[Volume i, page 1061.]

Section 61. That the license granted under the authority of this State to keep inns and taverns, shall not be construed to authorize the sale of any vinous, spirituous, fermented, or other intoxicating liquors upon the Sabbath, commonly called Sunday; and all persons offending herein shall be subject to all the penalties and liabilities of the persons selling liquor without license, as specified in the statute of this State entitled "An act concerning inns and taverns," and shall likewise be subject to the forfeiture of the license, at the discretion of the court before whom conviction is had; and further, if any person shall offer or expose for sale, on the said day, any spirituous, vinous, fermented, or other intoxicating liquors, such person so offending shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine, not exceeding twenty dollars, together with the costs of prosecution.

Liquors.

[Volume ii, page 1795.]

Section 50. That none of the provisions of the thirty-seventh section of the act entitled "An act concerning inns and taverns," approved April 17, 1846, or of the act entitled "A supplement to an

act concerning inns and taverns," approved March 3, 1847, which supplement was approved March 8, 1848, or of the act entitled "A further supplement to an act entitled 'An act concerning inns and taverns,' approved February 20, 1849," shall hereafter apply to offenses committed in any of the incorporated cities of this State, the ordinances of which provide for the punishment of the unlicensed sale of spirituous liquors, and for the punishment of the sale of spirituous, malt, vinous, fermented, or intoxicating liquors on Sunday. Hotels.

[Volume ii, page 2446.]

SECTION 8. That no pawnbroker shall receive by way of pledge or pawn any goods, articles, or things whatsoever upon the first day of the week, commonly called Sunday. No pawning on Sunday.

[Volume ii, page 2480.]

SECTION 6. That any person using a public highway so dedicated, on which a plank road has been constructed, shall pay the legal toll, according to the rates of the company . . . except . . . in case of funerals, or going to or from religious meetings on Sunday.

NEW MEXICO.

[Compiled Laws of New Mexico, 1897, page 396.]

SECTION 1368. Any person or persons who shall be found on the first day of the week, called Sunday, engaged in any sports, or in horse-racing, cock fighting, or in any other manner disturbing any worshiping assembly or private family, or attending any public meeting or public exhibition, excepting for religious worship or instruction, or engaged in any labor, except works of necessity, charity, or mercy, shall be punished by a fine not exceeding fifteen dollars nor less than five dollars, or imprisonment in the county jail of not more than fifteen days nor less than five days, in the discretion of the court, upon conviction before any district court. Sunday amusements prohibited. Penalty.

SECTION 1369. All fines collected under this act to be applied to the school fund of the district in which the offense was committed. It shall be the duty of any sheriff collecting said fine to pay the same to the county treasurer, to the credit of the school district of the county in which the said offense was committed, within thirty days after collecting said fine, and take his receipt therefor. Disposition of fines.

SECTION 1370. It shall be lawful in cases of necessity for farmers and gardeners to irrigate their lands and when necessary to preserve the same, to remove grain and other products from the fields on said day; and nothing in this act shall be construed to prevent cooks, waiters, and other employees of hotels and restaurants, and of butchers and bakers, from performing their duties on said day.

SECTION 1372. Sunday, for the purposes of this act, shall be regarded as the time between sunrise and midnight of said day.

NEW YORK.

[Birdseye's Revised Statutes, Codes, and General Laws of New York, 1901, volume iii, page 3444.]

Newspaper contracts valid.

SECTION 1. CONTRACTS FOR ADVERTISEMENTS IN SUNDAY NEWSPAPERS VALID. All contracts or agreements of any nature made with the publishers or proprietors of any paper dated, published, or issued on the first day of the week shall be as valid, legal, and binding, as contracts made with newspapers dated or published on any other day of the week. (Laws of 1871, chapter 702, section 1.)[1]

Disturbing congregations.

SECTION 2. CERTAIN ACTS PROHIBITED. The first day of the week being by general consent set apart for rest and religious uses, the law prohibits the doing on that day of certain acts hereinafter specified, which are serious interruptions of the repose and religious liberty of the community. (Penal Code, section 259.)

Definition.

SECTION 3. SABBATH-BREAKING DEFINED. A violation of the foregoing prohibitions is Sabbath-breaking. (Penal Code, section 260.)

Sunday labor.

SECTION 5. All labor on Sunday is prohibited, except the works of necessity or charity. In works of necessity or charity is included whatever is needful during the day for the good order, health, or comfort of the community. (Penal Code, section 263, as amended by Law of 1883, chapter 358.)

Exemption for observers of another day.

SECTION 6. PERSONS OBSERVING ANOTHER DAY AS A SABBATH. It is sufficient defense to a prosecution for work or labor on the first day of the week that the defendant uniformly keeps another day of the week as holy time, and does not labor on that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time. (Penal Code, section 264, as amended by Laws of 1885, chapter 519.)

Shooting, hunting, fishing, noise.

SECTION 7. PUBLIC SPORTS, ETC., PROHIBITED. All shooting, hunting, fishing, playing, horse-racing, gaming, or other public sports, exercises, or shows, upon the first day of the week, and all noise disturbing the peace of the day, are prohibited. (Penal Code, section 265, as amended by Laws of 1883, chapter 358.)

All trades and mechanical employments prohibited.

SECTION 8. SAME AS TO TRADES, MANUFACTURES, AND OTHER EMPLOYMENTS. All trades, manufactures, agricultural or mechanical employments upon the first day of the week are prohibited, except that when the same are works of necessity that may be performed on that day in their usual and orderly manner, so as not to interfere with the repose and religious liberty of the community. (Penal Code, section 266, as amended 1883, chapter 358.)

SECTION 9. PUBLIC TRAFFIC. All manner of public selling or offering for sale of any property on Sunday is prohibited, except that

[1] Late in the year 1910, the Court of Appeals of the State of Missouri, in a case brought by the St. Louis "Republic" for the payment of advertising done on Sunday, decided that such advertising could not be collected.

articles of food may be sold and supplied at any time before ten o'clock in the morning, and except also that meals may be sold to be eaten on the premises where sold or served elsewhere by caterers; and prepared tobacco, milk, ice, and soda water in places other than where spirituous or malt liquors or wine are kept or offered for sale, and fruit, flowers, confectionery, newspapers, drugs, medicines, and surgical appliances may be sold in a quiet and orderly manner at any time of the day. The provisions of this section, however, shall not be construed to allow or permit the public sale or exposing for sale or delivery of uncooked flesh foods, or meats, fresh or salt, at any hour or time of the day. (Penal Code, section 267, as amended by Laws of 1883, chapter 358; Laws of 1896, chapter 648, and Laws 1901, chapter 392.)

Selling prohibited and permitted.

SECTION 10. SERVING PROCESS. All service of legal process, of any kind whatever, on the first day of the week is prohibited, except in cases of breach of the peace or apprehended breach of the peace or when sued out for the apprehension of a person charged with crime, or except where such service is specially authorized by statute. Service of any process upon said day except as herein permitted is absolutely void for any and every purpose whatsoever. (Penal Code, section 268, as amended Laws 1892, chapter 622.)

Legal processes.

SECTION 11. PENALTY FOR SABBATH-BREAKING. Sabbath-breaking is a misdemeanor, punishable by a fine not less than five dollars and not more than ten dollars, or by imprisonment in a county jail not exceeding five days, or by both; but for a second or other offense, where the party shall have been previously convicted, it shall be punishable by a fine not less than ten dollars and not more than twenty dollars, and by imprisonment in a county jail not less than five nor more than twenty days.

Penalty.

SECTION 12. FORFEITURE OF COMMODITIES EXPOSED FOR SALE. In addition to the penalty imposed by the last section, all property and commodities exposed for sale on the first day of the week in violation of the provisions of this chapter shall be forfeited. Upon conviction of the offender by a justice of the peace of a county, or by any police justice or magistrate, or by a mayor, recorder, or alderman of a city, such officer shall issue a warrant for the seizure of the forfeited articles, which, when seized, shall be sold on one day's notice, and the proceeds paid to the overseers of the poor, for the use of the poor of the town or city. (Penal Code, section 270, as amended Laws 1883, chapter 358.)

Forfeiture.

SECTION 13. PENALTY FOR MALICIOUSLY SERVING PROCESS. Whoever maliciously procures any process in civil action to be served on Saturday, upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor. (Penal Code, section 271.)

Malicious legal service.

Processions prohibited.

SECTION 14. PROCESSIONS AND PARADES PROHIBITED; PENALTY. All processions and parades on Sunday in any city, excepting only funeral processions for the actual burial of the dead, and processions to and from a place of worship in connection with a religious service there celebrated, are forbidden; and in such excepted cases there shall be no music, fireworks, discharge of cannon or firearms, or other disbursing [so in the original] noise. At a military funeral, and at the burial of a national guardsman, or of a deceased member of an association of veteran soldiers, or of a disbanded militia regiment, or of a secret fraternal society, music may be played while escorting the body, but not within one block of a place of worship where service is then celebrated. A person willfully violating any provision of this section is punishable by fine not exceeding twenty dollars or imprisonment not exceeding ten days, or by both. (Penal Code, section 276, as amended Laws 1883, chapters 302, 358, and Laws 1895, chapter 778.)

Amusements.

SECTION 15. THEATRICAL AND OTHER PERFORMANCES PROHIBITED; PENALTY. The performance of any tragedy, comedy, opera, ballet, farce, negro minstrelsy, negro or other dancing, wrestling, boxing with or without gloves, sparring contest, trial of strength, or any part or parts therein or any circus, equestrian, or dramatic performance or exercise, or any performance or exercise of jugglers, acrobats, club performances, or rope dancers, on the first day of the week is forbidden; and every person aiding in such exhibition, performance, or exercise, by advertisement, posting, or otherwise, and every owner or lessee of every garden, building, or other room, place, or structure, who leases or lets the same for the purpose of any such exhibition, performance, or exercise, or who assents to the use of the same, for any such purpose, if it be so used, is guilty of a misdemeanor.

$500 penalty.

In addition to the punishment therefor provided by statute, every person violating this section is subject to a penalty of five hundred dollars, which penalty "The Society for the Reformation of Juvenile Delinquents" in the city of New York, for the use of that society, and the overseers of the poor in any other city or town, for the use of the poor, are authorized, in the name of the people of this State, to recover. Besides this penalty, every such exhibition, performance, or exercise, of itself, annuls any license which may have been previously obtained by the manager, superintendent, agent, owner, or lessee, using or letting such building, garden, room, place, or other structure, or consenting to such exhibition, performance, or exercise. (Penal Code, section 277, as amended Laws 1883, chapter 358.)

Sunday barbering a misdemeanor.

SECTION 16. BARBERING ON SUNDAY A MISDEMEANOR. Any person who carries on or engages in the business of shaving, hair cutting, or other work of a barber on the first day of the week, shall be

deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not more than five dollars; and upon a second conviction for a like offense shall be fined not less than ten dollars, and not more than twenty-five dollars, or be imprisoned in the county jail for a period of not less than ten days nor more than twenty-five days, or be punished by both such fine and such imprisonment at the discretion of the court or magistrate; *Provided,* that in the city of New York, and the village of Saratoga Springs, barber shops or other places where a barber is engaged in shaving, hair cutting, or other work of a barber may be kept open, and the work of a barber may be performed therein until one o'clock of the afternoon of the first day of the week.[1] (Law 1895, chapter 823, section 1.)

[Volume iii, page 3393.]

SECTION 27. DAYS; MODE OF COMPUTING DAYS; NIGHT-TIME. A calendar day includes the time from midnight to midnight. Sunday or any other day of the week specifically mentioned means a calendar day.

Day defined.

[Volume ii, page 2249.]

SECTION 31. It shall not be lawful for any corporation, association, copartnership, or person, whether having paid such tax or not, to sell, offer, or expose for sale, or give away, any liquor on Sunday, or before five o'clock in the morning on Monday.

Liquor selling.

[1] Up to 1910 Kentucky had a law, section 1322, Kentucky Statutes, passed March 27, 1893, reading almost word for word the same as this law down to the proviso. Setting the law aside as class legislation, and as being already covered by the general Sunday law of the State (section 1321), the Kentucky Court of Appeals, in a decision rendered March 8, 1910 (John Stratman *v.* Commonwealth of Kentucky), said:

"There is nothing in the business of barbering that is dangerous, hurtful, or injurious to society. . . . In fact, instead of being hurtful to society, there is no trade perhaps that lends so much to the comfort, convenience, cleanliness, and good looks of the male portion of our citizenship. By many the barber is not looked upon as a luxury, but as a necessity, and there is much to be said in favor of the position of those who hold that it is as necessary that the barber shop shall remain open a reasonable time on Sunday, for the accommodation of those absolutely in need of the barber's services, as it is that the livery stable, the drug store, the news stand, or the restaurant should be kept open for the accommodation and convenience of the public. . . . While the Legislature has the undoubted right to classify business, occupations, or trades, for the purpose of exercising the police power of the State, it has been held that such classification must be reasonable and natural. Here the police power is exercised, not against the trade, but the violation of the Christian Sabbath. It is not barbering that the law seeks to prevent, but merely barbering on Sunday — the violation of the Christian Sabbath."

Barbering not injurious to society.

These last two sentences reveal the real object of every Sunday law in existence. Whatever they may be called, civil statutes, police regulations, or what not, they are never enacted because the things forbidden in them are uncivil or wrong in themselves, but, as here twice stated, to prevent "the violation of the Christian Sabbath."

NORTH CAROLINA.

[Revisal of 1905 of North Carolina, volume i, page 854.]

Sunday labor.

SECTION 2836. WORK IN ORDINARY CALLING ON SUNDAY FORBIDDEN. On the Lord's day, commonly called Sunday, no tradesman, artificer, planter, laborer, or other person, shall, upon land or water, do or exercise any labor, business, or work of his ordinary calling, works of necessity and charity alone excepted, nor employ himself in hunting, fishing, or fowling, nor use any game, sport, or play, upon pain that every person so offending, being of the age of fourteen years and upwards, shall forfeit and pay one dollar.

Legal processes.

SECTION 2837. WHAT PROCESS EXECUTED ON SUNDAY. It shall not be lawful for any sheriff, constable, or other officer to execute any summons, capias, or other process on Sunday, unless the same be issued for treason, felony, or misdemeanor.

Legal aspects.

SECTION 2839. ACTS TO BE DONE ON SUNDAY OR HOLIDAYS. Where the day or the last day for doing an act required or permitted by law to be done falls on Sunday, the act may be done on the next succeeding secular or business day.

[Volume i, page 1122.]

Fishing.

SECTION 3841. FISHING WITH NETS ON SUNDAY. If any person fish on Sunday with a seine, drag-net, or other kind of net, except such as is fastened to stakes, he shall be guilty of a misdemeanor, and fined not less than two hundred nor more than five hundred dollars, or imprisoned more than twelve months.

Hunting.

SECTION 3842. HUNTING ON SUNDAY. If any person shall, except in defense of his own property, hunt on Sunday with a dog, or shall be found off his premises on Sunday, having with him a shotgun, rifle, or pistol, he shall be guilty of a misdemeanor, and pay a fine not exceeding fifty dollars, or be imprisoned not exceeding thirty days.

Penalty.

SECTION 3843. HUNTING WILD FOWL ON SUNDAY. If any person shall hunt or shoot wild birds or fowl on Sunday, with gun or firearms, or use any gun other than can be fired from the shoulder, he shall be guilty of a misdemeanor, and fined not less than one hundred dollars or imprisoned not less than thirty days.

Railroading.

SECTION 3844. RUNNING TRAINS ON SUNDAY. If any railroad company shall permit the loading or unloading of any freight car on Sunday, or shall permit any car, train of cars, or locomotive to be run on Sunday on any railroad, except such as may be run for the purpose of transporting the United States mails, and passengers with their baggage, and ordinary express freight in an express car exclusively, and such as may be run by law, such railroad company shall be guilty of a misdemeanor in each county in which such car, train of cars, or locomotive shall run, or in which any such freight car shall be loaded or unloaded, and upon conviction shall be fined not

less than five hundred dollars for each offense; *Provided*, that the word "Sunday" in this section shall be construed to embrace only that portion of the day between sunrise and sunset; and that trains *in transitu*, having started on Saturday, may, in order to reach the terminus or shops, run until nine o'clock A. M. on Sunday, but not later, nor for any other purpose than to reach the terminus or shops.

[Volume i, page 1025.]

SECTION 3459. HUNTING BEFORE DAYLIGHT AND AFTER SUNSET. If any person shall hunt or shoot any wild fowl or game bird, on any day after the hour of sunset, or before the hour of daylight, or shall use any gun other than can be fired from the shoulder, or shall hunt or shoot wild fowl, birds, or game of any kind on Sunday, he shall be guilty of a misdemeanor; *Provided*, that wild fowl may be hunted after sunset and before daylight and by firelight in that part of Bogue sound in Carteret county, west of Sally Bell's shoal.

More about hunting.

[Volume i, page 706.]

SECTION 2384. AT NIGHT OR ON SUNDAY. If any person shall catch or take any oysters from any of the public grounds or natural oyster beds of the State at night or on Sunday, he shall be guilty of a misdemeanor and be fined not exceeding fifty dollars or imprisoned not exceeding thirty days.

Catching oysters.

[Volume i, page 708.]

SECTION 2394. UNLOADING OYSTERS ON SUNDAY OR AT NIGHT. If any person shall unload any oysters from any boat, vessel, or car at any factory or house for shipping, shucking, or canning oysters on Sunday, or after sunset or before sunrise, he shall be guilty of a misdemeanor and be fined not more than fifty dollars or imprisoned not more than thirty days; *Provided*, whenever any boat or vessel shall have partially unloaded or discharged its cargo before sunset, the remainder of said load or cargo may be discharged in the presence of an inspector.

Unloading oysters.

[Volume i, page 632.]

SECTION 2077. DISPENSARIES; SALES IN, HOW MADE. No liquor of any kind shall be sold in any dispensary on Sunday or election days, and no dispensary shall ever be opened or liquor sold therein before sunrise or after sunset on any day. . . .

Liquor selling.

[Volume i, page 1045.]

SECTION 3532. SUNDAY, SELLING ON. If any person shall sell spirituous, or malt, or other intoxicating liquors on Sunday, except on the prescription of a physician, and then only for medical purposes, he shall be guilty of a misdemeanor, and be punished by fine or imprisonment, or both, in the discretion of the court.

Liquor selling.

NORTH DAKOTA

[Revised Codes of North Dakota, 1905.]

Sunday sacredness enforced.

SECTION 8567. The first day of the week being by very general consent set apart for rest and religious uses, the law prohibits the doing on that day certain acts hereinafter specified.

SECTION 8568. Any violation of the foregoing prohibition is Sabbath-breaking.

SECTION 8569. Under the term "day" as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

Acts prohibited on Sunday.

SECTION 8570. The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath-breaking: (1) Servile labor; (2) Public sports; (3) Trades, manufactures, and mechanical employments; (4) Public traffic; (5) Serving process.

SECTION 8571. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity.

Sabbatarians exempt.

SECTION 8572. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Gaming prohibited.

SECTION 8573. All shooting, sporting, horse-racing, gaming, or other public sports upon the first day of the week are prohibited.

Secular work prohibited.

SECTION 8574. All trades, manufactures, and mechanical employments upon the first day of the week, are prohibited.

Trafficking prohibited.

SECTION 8575. All manner of public selling, or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

SECTION 8576. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except when such service shall be specially authorized by law.

Penalty.

SECTION 8577. Every person guilty of Sabbath-breaking is punishable by a fine of not less than one dollar nor more than ten dollars, at the discretion of the court, for each offense.

Collection of fines.

SECTION 8578. The fines prescribed in this chapter for profane swearing and for Sabbath-breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

SECTION 8579. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor. Prosecution of Sabbatarians on Saturday.

SECTION 8580. Any willful attempt, by means of threats or violence, to compel any person to adopt, practice, or profess any particular form of religious belief, is a misdemeanor.[1] Religious compulsion.

SECTION 8581. Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor. Converse of Sec. 8580.

OHIO.

[Bates's Annotated Ohio Statutes, 1908, volume iii.]

SECTION 7032. SPORTING, HUNTING, FISHING, SHOOTING, ETC., ON SUNDAY. Whoever, being over fourteen years of age, engages in sporting, rioting, quarreling, hunting, fishing, or shooting, on Sunday, shall, on complaint made within ten days thereafter, be fined not more than twenty dollars, or imprisoned not more than twenty days, or both. Sporting.

SECTION 7032a. EXHIBITING THEATRICAL OR DRAMATIC PERFORMANCE ON SUNDAY. Whoever on the first day of the week, commonly called Sunday, participates in or exhibits to the public with or without charge for admittance, in any building, room, ground, garden, or other place in this State, any theatrical or dramatic performance of any kind or description, or any equestrian or circus performance of jugglers, acrobats, rope dancing, sparring exhibitions, variety shows, negro minstrelsy, living statuary, ballooning, or any baseball playing, or any tenpins, or other games or similar kind or kinds, or participates in keeping any low or disorderly house of resort, or shall sell, dispose of, or give away any ale, beer, porter, or spirituous liquors in any building appendant or adjacent thereto, when any such show, performance, or exhibition is given, or houses or place is kept, he or she shall, on complaint made within twenty days thereafter, be fined in any sum not exceeding one hundred dollars, or be confined in the county jail not exceeding six months, or both, at the discretion of the court. Amusements.

SECTION 7033. COMMON LABOR ON SUNDAY. Whoever, being over fourteen years of age, engages in common labor on the first day of the week, commonly called Sunday; and whoever, being over fourteen years of age, shall open or cause to be opened any building o- Sunday labor prohibited.

[1] This principle applied would nullify all Sunday laws.

place for the transaction of business on the first day of the week, commonly called Sunday, or who shall require any person in his employ or under his control to engage in common labor on Sunday, shall, on complaint made within ten days thereafter, and upon conviction, be fined, for the first offense, twenty-five dollars, and for each subsequent offense such person shall be fined not less than fifty dollars nor more than one hundred dollars, and imprisoned not less than five days nor more than thirty days. But this section does not apply to or embrace works of necessity or of charity, and does not extend to persons who conscientiously observe the seventh day of the week as the Sabbath,[1] and who do in fact abstain, on that day, from the doing of the things herein prohibited on Sunday; nor shall it be so construed as to prevent families emigrating from traveling, or watermen from landing their passengers, or keepers of toll-bridges, toll-gates, or ferries from attending the same, on Sunday.

Sabbatarians exempted.

Section 7033-1. Penalty for Barbering on Sunday. Any person who engages in the business of barbering on Sunday shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than fifteen dollars, and upon subsequent conviction for a like offense shall be fined not less than twenty dollars and not more than thirty dollars, or imprisoned in the county jail for a period of not less than twenty days nor more than thirty days, or be both fined and imprisoned at the discretion of the court.

Barbering.

[Bates's Annotated Ohio Statutes, 1908, volume ii.]

Section 4364-20. (Sec. 11.) Closing of Saloons on Sunday. That the sale of intoxicating liquors, whether distilled, malt, or vinous, on the first day of the week, commonly called Sunday, except by a regular druggist on a written prescription of a regular practicing physician for medical purposes only, is hereby declared to be unlawful, and all places where such intoxicating liquors are on other days sold or exposed for sale, except regular drug stores, shall on that day be closed, and whoever makes any such sales, or allows any such place to be open or remain open on that day shall be fined in any sum not exceeding one hundred dollars and not less than twenty-five dollars for the first offense, and for each subsequent offense shall be fined

Liquor selling.

[1] The very fact that there are those with whose consciences these Sunday laws would come in conflict if they were not exempted, proves that the laws themselves are unjust. Sunday laws are open to the same charge as was the Virginia religious bill of 1785. Madison said: "As the bill violates equality by subjecting some to peculiar burdens, so it violates the same principle by granting to others peculiar exemptions." If a Christian has a right to be exempted from the operation of a law on account of a difference in belief from the majority, the unbeliever has the same right; — in other words, if *one* who differs from the majority has a right to exemption, *all* have.

Injustice of Sunday laws.

not more than two hundred dollars or be imprisoned in the county jail or city prison not less than ten days and not exceeding thirty days, or both.

HOTELS AND EATING HOUSES. In regular hotels and eating houses the word "place" herein used shall be held to mean the room or part of room where such liquors are usually sold or exposed for sale and the keeping of such a room or part of room securely closed shall be held, as to such hotels and eating houses, as a closing of the place, within the meaning of this section. Hotels.

MUNICIPAL REGULATION. And any municipal corporation shall have full power to regulate the selling, furnishing, or giving away of intoxicating liquors as a beverage and places where intoxicating liquors are sold, furnished, or given away as a "beverage," except as provided for in section 4364-20c of this act. Regulating liquor selling.

[Volume i, title 3, chapter 16.]

(409 j) SECTION 16. CATCHING, KILLING, INJURING, PURSUING GAME BIRDS, DESTROYING EGGS, NESTS, OR YOUNG; HUNTING, SHOOTING, TRAPPING, ETC. Game.

. . . . . .

No person shall catch, kill, injure, or pursue, any wild duck or other waterfowl on Sunday or Monday of any week, nor catch, kill, injure, or pursue, or shoot at any such waterfowl, before sunrise or after sunset upon any day upon which day it shall be lawful to kill the same. No person shall hunt or shoot, or have in the open air for such purposes, any of the implements for hunting or shooting on any Sunday. Hunting on Sunday and Monday.

(409 k) SECTION 10. CATCHING, KILLING, INJURING, OR PURSUING RABBITS, WHEN UNLAWFUL. No person shall, within this State, catch, kill, injure, or pursue with such intent, any rabbit by the aid or use of any gun except from the fifteenth day of November to the fifth day of December; *Provided, however,* that nothing in this section shall prohibit the killing of rabbits at any time, except on Sunday, in any manner, by the owner, manager, or tenant of the premises, or by any *bona fide* employee of such owner, manager, or tenant where they may be found injuring grain, berries, fruit, vegetables, trees, or shrubbery. . . . Rabbits not to be killed on Sunday.

RACCOONS. No person shall, within this State, kill, or pursue with such intent, any raccoon, except from the first day of September to the first day of March; *Provided,* that nothing in this section shall prohibit the killing of raccoons at any time (except on Sundays) in any manner by the owner, manager, or tenant of the premises, or by any *bona fide* employee of such owner, manager, or tenant, when such animals may be found injuring grain or catching domesticated fowls. Raccoons not to be killed on Sunday.

OKLAHOMA.

[Revised and Annotated Statutes of Oklahoma, 1903, volume i.]

Why law forbids certain acts on Sunday.

SECTION 1960. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

Sabbath-breaking.

SECTION 1961. Any violation of this prohibition is Sabbath-breaking.

Day defined.

SECTION 1962. Under the term "day" as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

Acts forbidden.

SECTION 1962. Under the term "day" as employed in the phrase on the first day of the week, the doing of any of which is Sabbath-breaking: First, servile labor; second, public sports; third, trades, manufactures, and mechanical employments; fourth, public traffic; fifth, serving process, unless authorized by law so to do.

Work forbidden.

SECTION 1964. All manner of servile labor on the first day of the week is prohibited, excepting works of necessity or charity.

Sabbatarians exempt.

SECTION 1965. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Sports forbidden.

SECTION 1966. All shooting, sporting, horse-racing, gaming, or other public sports, upon the first day of the week, are prohibited.

Trades forbidden.

SECTION 1967. All trades, manufactures, and mechanical employments, upon the first day of the week, are prohibited.

Selling forbidden.

SECTION 1968. All manner of public selling or offering, or exposing for sale publicly, of any commodities upon the first day of the week, is prohibited, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

Legal process.

SECTION 1969. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service shall be specially authorized by law.

Fine $1.00.

SECTION 1970. Every person guilty of Sabbath-breaking is punishable by fine of one dollar for each offense.

Manner collecting fines.

SECTION 1971. The fines prescribed in this chapter for profane swearing and for Sabbath-breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines or costs.

SECTION 1972. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor. Provision protecting observers of seventh day from malicious process.

SECTION 1973. Any willful attempt, by means of threats or violence, to compel any person to adopt, practice, or profess any particular form of religious belief, is a misdemeanor. Religious compulsion prohibited.

SECTION 1974. Every person who willfully prevents, by threats or violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor. Converse of sec. 1973.

SECTION 2616. Every innkeeper, in person licensed to sell liquors, who sells or gives away any strong or spirituous liquor, or wine, upon Sunday, is guilty of a misdemeanor. Liquor selling on Sunday.

SECTION 3410. Every person who shall sell or give away any malt, spirituous, and vinous liquors on the day of any special or general election or at any time during the first day of the week, commonly called Sunday, or who shall keep an open saloon after midnight, or open same before five o'clock in the morning, shall forfeit and pay for every such offense the sum of one hundred dollars. Fine.

OREGON.

[Bellinger and Cotton's Annotated Codes and Statutes of Oregon, 1902.]

SECTION 1968. WHAT BUSINESS PROHIBITED AND WHAT ALLOWED ON SUNDAY. If any person shall keep open any store, shop, grocery, ball-alley, billiard-room, or tippling-house for the purpose of labor or traffic, or any place of amusement, on the first day of the week, commonly called Sunday or the Lord's day, such person, upon conviction thereof, shall be punished by a fine not less than five nor more than fifty dollars; *Provided*, that the above provision shall not apply to the keepers of drug stores, doctor shops, undertakers, livery-stable keepers, barbers, butchers, and bakers; and all circumstances of necessity and mercy may be pleaded in defense, which shall be treated as questions of fact for the jury to determine, when the offense is tried by jury. Acts prohibited on Sunday. Persons exempted.

SECTION 1974. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday, or give, or sell, or otherwise dispose of intoxicating liquors on that day; any persons violating this section shall be fined in any sum not exceeding twenty-five nor less than ten dollars for each offense; and such fine to be for the use of the common schools in the county in which the offense was committed; *Provided*, that this section, so far as it prohibits keeping open a house or room, shall not apply to tavern-keepers. Sunday liquor selling prohibited.

Liquor selling on Sunday.

SECTION 1974. LIQUOR NOT TO BE GIVEN AWAY OR SOLD OR RETAIL HOUSE KEPT OPEN ON SUNDAY. No person shall keep open any house or room in which intoxicating liquor is kept for retail, on the first day of the week, commonly called Sunday,[1] or give, or sell, or otherwise dispose of intoxicating liquors on that day; any person violating this section shall be fined in any sum not exceeding twenty-five nor less than ten dollars for each offense; and such fine to be for the use of common schools in the county in which the offense was committed; *Provided,* that this section, so far as it prohibits keeping open a house or room, shall not apply to tavern-keepers.

Sunday barbering a misdemeanor.

SECTION 2097. BARBERING ON SUNDAY UNLAWFUL. That it shall be a misdemeanor for any person or persons to carry on the business of barbering on Sunday in Oregon.

SECTION 2098. PENALTY FOR BARBERING ON SUNDAY. Any person or persons found guilty of violating this act shall be punished by a fine of ten dollars or by imprisonment in the county jail for five days for the first offense; and by a fine of not less than twenty-five dollars nor more than fifty dollars, or by imprisonment in the county jail for not less than ten days nor more than twenty-five days, for the second offense, and for each subsequent offense.

Penalty.

SECTION 2099. THE TERM "PERSON," ETC., WHAT TO INCLUDE. The term "person" or "persons," used in this act, shall be deemed to include partnerships and corporations.

PENNSYLVANIA.

[Pepper and Lewis's Digest of Pennsylvania, 1894.]

SUNDAY.

Processes on Sunday.

SECTION 1, COLUMN 4405. PROCESS NOT TO BE SERVED ON SUNDAY. No person or persons, upon the first day of the week, shall serve or execute, or cause to be served or executed, any writ, precept, warrant, order, judgment, or decree, except in cases of treason, felony, or breach of the peace, but the serving of any such writ, precept, warrant, order, judgment, or decree shall be void, to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, precept, warrant or order, judgment or decree at all.

Sunday laws not temperance laws.

Enforced Sunday observance obnoxious.

[1] The "Colorado Graphic" says: "Sunday laws are not passed in the interests of temperance. They are passed in the interest of a certain class of so-called Christians, who wish to tear down the beautiful structure Christ built, to gratify their selfish, clannish, dogmatic reasoning. They even grossly insult fellow-Christians who oppose Sunday legislation, and totally ignore the Hebrews. The question of Sunday observance is something with which no government, no State, no city, no town, should meddle. The observance of Sunday as a day of rest is a beautiful custom, but its enforcement at the muzzle of a national, a State, or a municipal law, is as obnoxious and uncalled for as the enforcement of church attendance or family prayers, by the same means."

SECTION 2, COLUMN 4406. CANAL OR RAILROAD COMPANIES NOT TO BE OBLIGED TO RUN ON SUNDAY. No part of any act of assembly heretofore passed, shall be construed to require any canal or railroad company to attend their works on the Sabbath days, for the purpose of expediting or aiding the passage of any boat, craft, or vehicle along the same; any clause or clauses in their respective charters, imposing a penalty for not aiding boats, crafts, or vehicles to pass within a certain time, to the contrary notwithstanding.

Canals and railroads not compelled to run on Sunday.

[In section 96, column 3943, above law is repeated.]

SECTION 3, COLUMN 4406. If any person shall do or perform any worldly employment or business whatsoever on the Lord's day, commonly called Sunday (works of necessity and charity only excepted), shall use or practice any unlawful game, hunting, shooting, sport, or diversion whatsoever on the same day, and be convicted thereof, every such person so offending shall, for every such offense, forfeit and pay four dollars, to be levied by distress; or in case he or she shall refuse or neglect to pay the said sum, or goods and chattels cannot be found, whereof to levy the same by distress, he or she shall suffer six days' imprisonment in the house of correction of the proper county; *Provided always*, that nothing herein contained shall be construed to prohibit the dressing of victuals in private families, bake-houses, lodging-houses, inns, and other houses of entertainment for the use of sojourners, travelers, or strangers, or to hinder watermen from landing their passengers, or ferrymen from carrying over the water travelers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk or the necessaries of life, before nine of the clock in the forenoon, nor after five of the clock in the afternoon of the same day.

Sunday work forbidden.

SECTION 4, COLUMN 4409. PENALTY TO BE PAID INTO SINKING FUND. The penalty inflicted by the first section of the act of assembly, entitled "An act for the prevention of vice and immorality and unlawful gaming, and to restrain disorderly sports and dissipation," shall hereafter be paid into the treasury of the commonwealth of Pennsylvania, for the use of the sinking fund.

SECTION 5, COLUMN 4409. LIMITATION OF PROSECUTION. Every such prosecution [shall] be commenced within seventy-two hours after the offense shall be committed.

SECTION 6, COLUMN 4409. DRINKING IN TAVERNS ON SUNDAY PROHIBITED. All persons who are found drinking and tippling in alehouses, taverns, or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offense, forfeit and pay one shilling and sixpence to any constable that shall demand the same, to the use of the poor; and all constables are hereby empowered, and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring

Sunday tippling prohibited.

May put in stocks.

the persons so refusing before the next justice of the peace, who may commit such offenders to the stocks,[1] or bind them to their good behavior, as to him shall seem requisite. And the keepers of such ale-houses, taverns, or other public house or place, as shall countenance or tolerate any such practices, being convicted thereof, by the view of a single magistrate, his own confession, or the proof of one or more credible witnesses, shall, for every offense, forfeit and pay ten shillings, to be recovered as and for the uses above said.

Trafficking in liquor prohibited on Sunday.

SECTION 7, COLUMN 4409. SALE OF LIQUORS ON SUNDAY PROHIBITED. It shall not be lawful for any person or persons to sell, trade, or barter in any spirituous or malt liquors, wine, or cider, on the first day of the week, commonly called Sunday; or for the keeper or keepers of any hotel, inn, tavern, ale-house, beer-house, or other public house or place, knowingly to allow or permit any spirituous or malt liquors, wine, or cider, to be drank on or within the premises or house occupied or kept by such keeper or keepers, his, her, or their agents or servants, on the said first day of the week.

[Section 29, Column 2713, same as above.]

Penalty.

SECTION 8, COLUMN 4410. PENALTY FOR VIOLATION OF ACT. Any person or persons violating the provisions of the foregoing section, shall, for each and every offense, forfeit and pay the sum of fifty dollars, one half of which shall be paid to the prosecutor, and the other half to the guardians of the poor of the city or county in which suit is brought, or in counties having no guardians of the poor, then to the overseers of the poor of the township, ward, or borough in which the offense was committed; to be recovered before any mayor, alderman, burgess, or justice of the peace, as debts of like amount are now by law recoverable, in any action of debt brought in the name of the commonwealth, as well for the use of the guardians of the poor (or for the overseers of the poor of the township, ward, or borough, as the case may be) as for the person suing; *Provided,* that when any prosecutor is himself a witness, on any trial under the provisions of this section, then the whole penalty of forfeiture shall be paid to the guardians or overseers as aforesaid; *And provided further,* that it shall be a misdemeanor in office for any such mayor, alderman, burgess, or justice of the peace to neglect to render to the said guardians of the poor and prosecutor the amount of such penalty, within ten days from the payment of the same.[2]

SECTION 9, COLUMN 4410. VIOLATION OF ACT A MISDEMEANOR. In addition to the civil penalties imposed by the last preceding sec-

Pennsylvania retains the stocks.

[1] If anything more were needed to show the religious origin and antiquated nature of American Sunday laws, we have it here. Think of the great Keystone State employing the "stocks" to enforce Sunday observance! Two hours in the stocks is one of the penalties prescribed in the old Sunday law of Charles II, of 1676. See pages 754, 755.

[2] "This is repealed so far as the county of Allegheny is concerned, by the act of 1872, April 3; P. L., 483; Commonwealth v. Gedikoh, 101 Pa., 354, 1882."

tion for a violation of the provisions of the first section of this act, every person who shall violate the provisions of that section, shall be taken and deemed to have committed a misdemeanor, and shall, on conviction thereof, in any criminal court in this commonwealth, be fined in any sum not less than ten, nor more than one hundred dollars, and be imprisoned in the county jail for a period not less than ten, nor more than sixty days, at the discretion of the court.[1] Penalty.

SECTION 10, COLUMN 4411. APPROPRIATION OF PENALTY. All penalties, fines, and forfeitures imposed, incurred, or paid, under the act to which this is a supplement, except so far as part thereof is payable to the prosecutor, shall be paid over to the guardians, directors, or other representatives of the poor of the city, district, or county in which the offense was committed.

SECTION 73, COLUMN 2142. FISHING ON SUNDAY PROHIBITED. It shall not be lawful for any person to fish on the first day of the week, called Sunday; any person violating the provisions of this section shall be liable to a penalty of twenty-five dollars for each and every offense. Fishing prohibited.

SECTION 50, COLUMN 2137. FISH NOT TO BE CAUGHT IN NET IN DELAWARE RIVER ON SUNDAY. It shall be unlawful for any person or persons to cast, draw, drift, anchor, set, stake, or otherwise make use of any gilling net, seine, shore net, drift net, eel pots, or any kind of net, for the purpose of catching fish in the Delaware river, from sunset on Saturday night until twelve o'clock on Sunday night of each and every week; and the person or persons so offending shall forfeit and pay the sum of one hundred dollars, together with the costs of suit, for each and every offense.

SECTION 29, COLUMN 2203. HUNTING ON SUNDAY. There shall be no hunting or shooting or fishing on the first day of the week, called Sunday, and any person offending against the provisions of this section shall be liable to a penalty of twenty-five dollars. Hunting, shooting, and fishing.

PHILIPPINES.

[No Sunday law found in the "Public Laws Passed by the Philippine Commission."]

PORTO RICO.

[Revised Statutes and Codes of Porto Rico, 1902.]

TITLE XIX.

SUNDAY CLOSING.

SECTION 553. That on every Sunday commercial and industrial establishments, excepting public markets, pharmacies, bakeries, hotels,

[1] Section 39, column 2717, and section 380, column 1248, are duplicates of section 9 above.

Business houses to be closed on Sunday.

restaurants, cafés, and places where refreshments only are served, excepting also public and quasi-public utilities, and works of emergency, necessary to prevent unusual and serious financial loss, shall remain closed and do no business whatever after twelve o'clock noon. This prohibition shall not, however, extend to theaters and other places devoted exclusively to amusements or to charitable purposes; at all such places it shall be lawful to work at any hour on Sunday, but only in aid of such charitable purposes or amusements.[1]

SECTION 554. The municipal council of any municipality may, by ordinance, require commercial and industrial establishments, including those excepted in section 553, or any of them, to remain closed at all hours on Sunday, excepting the works of emergency therein mentioned.

SECTION 555. In case of disorder on Sunday in any establishment herein excepted from the provisions hereon, or excepted in any municipal ordinance enacted under the authority hereof, the alcalde may order said establishment to be closed forthwith during the remainder of the day in which the disorder occurs; and in case of a repetition in the same establishment of disorder on any other Sunday, the alcalde may direct such establishment to be closed for a period not exceeding three months; and in case of each subsequent offense in the same establishment, the alcalde may order it to be closed for a period not exceeding one year.

Disorder in excepted cases.

SECTION 556. Any person, firm, or corporation violating the provisions of this title, or any part thereof, or of an order issued by an alcalde, or ordinance passed by a municipal council under the authority of this title, shall be fined in the police court for the first offense in a sum which shall not be less than five dollars nor exceed ten dollars; and for a subsequent offense, in a sum which shall not be less than ten dollars nor exceed twenty-five dollars. And for this purpose, the police courts shall have jurisdiction to impose the fines herein provided; and in all cases in which the fine imposed shall exceed, excluding costs, the sum of ten dollars, an appeal may be taken to the proper District Court in the manner provided by law for other appeals from the police courts. In default of the payment of any fine imposed hereunder within three days after the judgment shall have been entered or the appeal dismissed, the person convicted shall pay the said fine by imprisonment in the municipal jail, or any other penal institution, at the rate of one day for each half dollar of said fine remaining unpaid.

Penalty.

SECTION 557. All laws, decrees, or orders, or parts of laws, decrees, or orders, in conflict with this title are hereby repealed.

[1] Here is a Sunday law specifically permitting the running of theaters and places of amusement on Sunday. The people might about as well be told on the start to do on Sunday as they do on other days; *i. e.*, as they please.

RHODE ISLAND.[1]

[General Laws of Rhode Island, 1896, page 1002.]

Secular occupations prohibited on Sunday.

SECTION 17. Every person who shall do or exercise any labor or business or work of his ordinary calling, or use any game, sport, play, or recreation on the first day of the week, or suffer the same to be done or used by his children, servants, or apprentices, works of necessity and charity only excepted, shall be fined not exceeding five dollars for the first offense, and ten dollars for the second and every subsequent offense.

SECTION 18. Every person who shall employ, improve, set to work, or encourage the servant of any other person to commit any act named in the preceding section, shall suffer the like punishment.

Complaints.

SECTION 19. All complaints for violations of the provisions of the preceding two sections shall be made within ten days after the committing thereof, and not afterwards.

Sabbatarians exempted.

SECTION 20. Every professor of the Sabbatarian faith or of the Jewish religion, and such others as shall be owned or acknowledged by any church or society or said respective professions as members of or as belonging to such church or society, shall be permitted to labor in their respective professions or vocations on the first day of the week, but the exception in this section contained shall not confer the liberty of opening shops or stores on the said day for the purpose of trade and merchandise or lading, unlading, or fitting out of vessels, or of working at the smith's business, or any other mechanical trade in any compact place, except the compact villages in Westerly and Hopkinton, or of drawing seines or fishing or fowling in any manner in public places, and out of their own possessions; and in case any dispute shall arise respecting the person entitled to the benefit of this section, a certificate from a regular pastor or priest of any of the aforesaid churches or societies, or from any three of the standing members of such church or society, declaring the person claiming the

Exception of Sabbatarian villages.

[1] Rhode Island, first of all the American colonies, first in all the world, set the example of founding a government upon the principle of total separation of church and state. See pages 68-78. Boldly Roger Williams took his stand against Sabbath laws along with all other coercive religious legislation. See pages 59-67. And yet, strange to say, ever since the closing days of this noble man's life, the statute books of Rhode Island have been blemished with Sunday laws. See page 57. The present law authorizes town and city councils to make ordinances and regulations "against breakers of the Sabbath." See section 21. In order not to violate the conscientious convictions of those who observe another day, an exemption has been made for them (section 20), which says that they "shall be *permitted* to labor in their respective professions or vocations on the first day of the week;" this, however, not to extend to the keeping open of shops or stores, except in two specified villages; and any dispute as to who are entitled to this tolerating exemption is to be settled by "a certificate from a regular *pastor* or *priest* of any of the aforesaid *churches* or *societies*,"—a purely religious exemption. This whole law is a blot and a blemish on the fair name of Rhode Island and its founder.

exemption aforesaid to be a member of or owned by or belonging to such church or society, shall be received as conclusive evidence of the fact.

Municipal provisions.

SECTION 21. PAGE 169. Town councils and city councils may from time to time make and ordain all ordinances and regulations for their respective towns, not repugnant to law, which they may deem necessary for the safety of their inhabitants; . . . against breakers of the Sabbath. . . .

No liquor selling on Sunday.

SECTION 2. PAGE 338. . . . No license granted under the provisions of this chapter shall authorize any person to sell any spirituous or intoxicating liquors on Sunday. . . .

SECTION 25, PAGE 346. No sale of the liquors enumerated in sections 1, 20, and 21 of this chapter shall be made on Sunday, except by registered pharmacists or registered assistant pharmacists upon a physician's prescription. And the town council of any town or the board of aldermen of any city may prohibit the sale of said liquors in their town or city during certain specified hours of any election day or holiday, and in such case shall give public notice thereof, at least twenty-four hours before said time. Any person who shall be convicted of offering to sell, selling, or suffering to be sold, by sample or otherwise, any of the liquors enumerated in sections 1, 20, and 21 of this chapter on Sunday, except as provided in this section, or during the hours prohibited by the town council or board of aldermen as aforesaid, shall be fined twenty dollars and be imprisoned in the county jail for ten days on the first conviction; and on the second conviction shall be fined fifty dollars and be imprisoned in the county jail three months; and in case such sale or offer to sell on Sunday or any prohibited days or hours as aforesaid shall be made or suffered to be made by any person holding a license under the provisions of this chapter, such license shall be forfeited and such person shall be disqualified to receive a license for the sale of intoxicating liquors for the period of five years after his conviction.

Penalty for liquor selling on Sunday.

SECTION 50, PAGE 351. [This section tells what constitutes evidence of Sunday selling of liquor.]

Saloon windows to be unobstructed on Sundays.

SECTION 62, PAGE 354. Every person licensed to sell intoxicating liquors shall cause to be removed on his licensed premises all obstructions of whatever kind that may prevent a clear view of the interior of the same from the outside thereof, by the passer by, through the window, during the entire day of each Sunday; and every person violating the provisions of this section shall be fined twenty dollars.

SECTION 2, PAGE 355. Town councils may license such performances, shows, exhibitions, public roller skating in rinks or halls, dances, and balls, within their several towns, subject to such regulations and restrictions as they may prescribe, but no such license shall authorize any of the afore-mentioned performances, shows, ex-

hibitions, dances, or balls, for the first day of the week; and said town councils shall demand and receive of every person to whom a license shall be granted under this chapter such sum not exceeding one hundred dollars, nor less than one dollar, for any single performance, show, exhibition, dance, or ball, as they may deem proper; *Provided,* that performances and entertainments given by religious and charitable societies for the purpose of furthering their religious or benevolent work are hereby excepted from the provisions of this chapter as to fees.

Religious shows on Sunday prohibited.

SECTION 12, PAGE 361. No license granted under the provisions of this chapter shall authorize any business to be transacted by pawnbrokers on the first day of the week.

Pawnbrokers.

SECTION 3, PAGE 372. Every person not being at the time under military duty, who shall discharge any rifle, gun, musket, blunderbuss, fowling piece, pistol, air gun, spring gun, or other small arms, or any contrivance arranged to discharge shot, bullets, arrows, darts, or other missiles, except upon land owned or occupied by him or by permission of the owner or occupant of the land on or into which he may shoot, within the compact part of any town or city, or, not being at the time on military duty, shall anywhere discharge any such arms or contrivances on Sunday, shall be fined not exceeding twenty dollars.

Shooting on Sunday prohibited.

SOUTH CAROLINA.

[Code of Laws of South Carolina, 1902.]

SECTION 500. No tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor, business, or work of their ordinary callings upon the Lord's day (commonly called the Sabbath), or any part thereof (works of necessity or charity only excepted); and every person being of the age of fifteen years or upwards, offending in the premises, shall, for every such offense, forfeit the sum of one dollar.

Secular occupations prohibited on Sunday

SECTION 501. No person or persons whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried, or showed forth, or exposed to sale.

Selling prohibited.

SECTION 502. No public sports or pastimes, as bear baiting, bull baiting, football, playing, horse-racing, interludes or common plays, or other games, exercises, sports, or pastimes such as hunting, shooting, chasing game, or fishing, shall be used on the Lord's day by any person or persons whatsoever; and every person or persons offending in any of the premises shall upon conviction be deemed guilty of a misdemeanor, and be subject to fine not to exceed fifty dollars or imprisonment not to exceed thirty days.

Sports prohibited.

Labor forbidden.

Penalty.

SECTION 503. In addition to the penalties prescribed against tradesmen, artificers, workmen, and laborers who shall do or exercise any worldly labor, business, or work of their ordinary calling upon the Lord's day (commonly called the Sabbath), or Sunday, or any part thereof, any corporation, company, firm, or person who shall order, require, or direct any work to be done in any machine shop or shops on Sunday, except in cases of emergency, shall, upon conviction, be deemed guilty of a misdemeanor, and shall be fined in a sum not less than one hundred dollars and not more than five hundred dollars for each offense.

Seizure.

SECTION 504. For the better execution of all and every the foregoing provisions, every magistrate within his county shall have power and authority to summon before him any person or persons whatsoever who shall offend in any of the particulars before mentioned, and upon his own view or confession of the party, or proof of any one or more witnesses, upon oath, said magistrate shall give a warrant, under his seal, to seize the said goods cried, showed forth, or put on sale as aforesaid, and to sell the same; and as to the other penalties and forfeitures, to impose a fine and penalty for the same, and to levy the said forfeitures and penalties by way of distress and sale of the goods of every such offender, returning overplus, if any be, for charges allowed for the distress and sale. All forfeitures and penalties recovered under this chapter to be paid over to county treasurer for the use of the county.

Disturbance of worship at any time.

SECTION 505. Any person who shall willfully and maliciously disturb or interrupt any meeting, society, assembly, or congregation convened for the purpose of religious worship, or shall enter such meeting while in a state of intoxication, or shall use or sell spirituous liquors, or use blasphemous, profane, or obscene language at or near the place of meeting, shall be deemed guilty of a misdemeanor, and shall, on conviction, be sentenced to pay a fine of not less than twenty or more than one hundred dollars, or be imprisoned for a term not exceeding one year or less than thirty days, or both or either, at the discretion of the court.

Gaming.

SECTION 516. Whoever shall keep, or suffer to be kept, any gaming table, or permit any game or games to be played in his, her, or their house, on the Sabbath day, such person or persons, on conviction thereof before any court having jurisdiction, shall be fined in the sum of fifty dollars, to be sued for on behalf of, and to be recovered for, the use of the State.

Railroading.

SECTION 2121. It shall be unlawful for any railroad corporation, owning or controlling railroads operating in this State, to load or unload, or permit to be loaded or unloaded, or to run or permit to be run, on Sunday, any locomotive, cars, or trains of cars, moved by steam power, except as hereinafter provided, and except to unload cars loaded with animals.

SECTION 2122. Said corporations or persons may run on Sunday, during the months of April, May, June, July, and August, trains laden exclusively with vegetables and fruits; and on said day, in any and every month, their regular mail trains, and such construction trains as may be rendered necessary by extraordinary emergencies other than those incident to freight or passenger traffic, and such freight trains as may be *in transitu* which can reach their destination by six o'clock in the forenoon; *Provided*, that the railroad commissioners shall have the power (upon proper application made to them for the purpose, by the officers of the church or religious denominations in charge of the place where such services are to be held) to authorize and permit the running of trains on any Sunday in the year for the transporting of passengers to and from religious services; *Provided*, the application for the permit and the authority granted must both be in writing, and made a part of the records of said railroad commissioners.

Exceptions.

Trains for religious services permitted.

SECTION 2123. Any train running by a schedule in conformity with the provisions of this chapter, but delayed by accident or other unavoidable circumstances, may be run until it reaches the point at which it is usual for it to rest upon a Sunday.

Trains to "rest" on Sunday.

SECTION 2124. For a willful violation of the provisions of the three preceding sections, the railroad company so offending shall forfeit to the State five hundred dollars, to be collected in any court or competent jurisdiction.

Penalty.

SOUTH DAKOTA.

[Revised Codes of South Dakota, 1903.]

SECTION 39, PAGE 1102. The first day of the week being by very general consent set apart for rest and religious uses, the law forbids to be done on that day certain acts deemed useless and serious interruptions of the repose and religious liberty of the community.

Why law forbids certain acts on Sunday.

SECTION 40. Any violation of this prohibition is Sabbath-breaking.

Sabbath-breaking defined.

SECTION 41. Under the term "day," as employed in the phrase "first day of the week," in the seven sections following, is included all the time from midnight to midnight.

Day defined.

SECTION 42. The following are the acts forbidden to be done on the first day of the week, the doing any of which is Sabbath-breaking: (1) Servile labor; (2) public sports; (3) trades, manufactures, and mechanical employments; (4) public traffic; (5) serving process.

Acts forbidden.

SECTION 43. All manner of servile work on the first day of the week is prohibited, excepting works of necessity or charity.

Servile work prohibited.

SECTION 44. It is a sufficient defense in proceedings for servile labor on the first day of the week, to show that the accused uniformly keeps another day of the week as holy time, and does not labor upon

Sabbatarian exemption.

that day, and that the labor complained of was done in such manner as not to interrupt or disturb other persons in observing the first day of the week as holy time.

Sports.

SECTION 45. All shooting, sporting, horse-racing, gaming, or other public sports, upon the first day of the week, are prohibited.

Trades etc., prohibited.

SECTION 46. All trades, manufactures, and mechanical employments upon the first day of the week, are prohibited.

Selling forbidden.

SECTION 47. All manner of public selling, or offering, or exposing for sale publicly, of any commodities on the first day of the week, is prohibited, except that meats, milk, and fish may be sold at any time before nine o'clock in the morning, and except that food may be sold to be eaten upon the premises where sold, and drugs and medicines and surgical appliances may be sold at any time of the day.

Legal processes.

SECTION 48. All service of legal process of any description whatever, upon the first day of the week, is prohibited, except in cases of breach of the peace, or apprehended breach of the peace, or when sued out for the apprehension of a person charged with crime, or except where such service may be specially authorized by law.

Penalty one dollar.

SECTION 49. Every person guilty of Sabbath-breaking is punishable by a fine of one dollar for each offense.

Collection of fines.

SECTION 50. The fines prescribed in this chapter for profane swearing and for Sabbath-breaking, may be collected in the manner prescribed by law, for the collection of debts; but no property shall be exempt from execution which has been taken to satisfy any such fines and costs.

Sabbatarians protected from malicious legal service.

SECTION 51. Whoever maliciously procures any process in a civil action to be served on Saturday upon any person who keeps Saturday as holy time, and does not labor on that day, or serves upon him any process returnable on that day, or maliciously procures any civil action to which such person is a party to be adjourned to that day for trial, is guilty of a misdemeanor.

Religious compulsion prohibited.

SECTION 52. Any willful attempt, by means of threats or violence, to compel any person to adopt, practice, or profess any particular form of religious belief, is a misdemeanor.[1]

Interference with religion a misdemeanor.

SECTION 53. Every person who willfully prevents, by threats of violence, another person from performing any lawful act enjoined upon or recommended to such person by the religion which he professes, is guilty of a misdemeanor.

TENNESSEE.

[Code of Tennessee, 1896.]

Common avocations unlawful.

SECTION 3029. If any merchant, artificer, tradesman, farmer, or other person shall be guilty of doing or exercising any of the common avocations of life, or of causing or permitting the same to be

[1] This principle applied would annul every Sunday law in existence.

done by his children or servants, acts of real necessity or charity excepted, on Sunday, he shall, on due conviction thereof before any justice of the peace of the county, forfeit and pay three dollars, one half to the person who will sue for the same, the other half for the use of the county.[1]

Barbering on Sunday a misdemeanor.

SECTION 3030. It shall be a misdemeanor for any person to carry on the business of barbering on Sunday in Tennessee; and any person found guilty of violating this section shall be fined not less than twenty-five dollars nor more than fifty dollars, or imprisoned in the county jail not less than fifteen nor more than thirty days, or both in the discretion of the court.[2]

Hunting, fishing, sports, etc.

SECTION 3031. Any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties as those who work on the Sabbath.

Carrying ardent spirits.

SECTION 2567. Any person who carries ardent spirits or other intoxicating liquors within one mile of any place of public worship, and offers to sell the same, is liable for each offense to pay ten dollars to any person who will sue therefor, and is also guilty of a misdemeanor.

Selling prohibited.

SECTION 2569. Every person selling or offering to sell any article of traffic whatsoever, within view of any worshiping assembly on the Sabbath day, in such manner as to disturb such assembly, is also liable as prescribed in section 2567.

Legal selling.

SECTION 2570. The provisions of the last section do not extend to any person selling such articles of traffic as he may lawfully sell on the Sabbath day, and at his usual place of business.

Grocery liquor-selling on Sunday prohibited.

SECTION 6784. No licensed grocer or other person in this State shall retail any malt, vinous, fermented, spirituous, or other intoxicating liquors on Sunday, nor keep open on Sunday any place where such liquors are sold or dispensed. The punishment for this offense shall be fine and imprisonment at the discretion of the court; *Provided*, that the provisions of this section shall not apply to druggists selling on the prescription of a practicing physician; *Provided further*, that restaurants and eating houses where spirituous, vinous, and malt liquors are sold under the license law of the State on week days, shall be allowed to conduct their eating department on Sunday, but the barroom shall be closed, and no drinks of any kind sold.

[1] The Tennessee Sunday law contains no exemption for observers of another day, in consequence of which many of this class have been made to suffer in that State. See Part VI, pages 672-717.

[2] The inconsistency of Sunday legislation is shown by a comparison of this with the preceding section. Under the former section a dry-goods merchant, a jeweler, or a blacksmith could carry on his usual avocation on Sunday and be subject to a fine of only three dollars; but a barber next door, for carrying on his trade, would be liable to a fine of not less than twenty-five dollars, and possibly fifty dollars. This is plainly class and cumulative legislation. See note on page 615.

TEXAS.

[Laws of Texas, 1887, by H. P. N. Gammel, volume ix, chapter 116, page 906.]

Labor on Sunday forbidden.

ARTICLE 183. Any person who shall hereafter labor, or compel, force, or oblige his employees, workmen, or apprentices to labor on Sunday, or any person who shall hereafter hunt game of any kind whatsoever on Sunday within one half mile of any church, schoolhouse, or private residence, shall be fined not less than ten nor more than fifty dollars.

Trade and amusements prohibited.

ARTICLE 186. Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employee of any such person, who shall sell or barter, or permit his place of business or place of public amusement to be opened for purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term "place of public amusement," shall be construed to mean circuses, theaters, variety theaters, and such other amusements as are exhibited, and for which an admission fee is charged, and shall also include dances at disorderly houses, low dives, and places of like character, with or without fees for admission.

[General Laws of Texas, 1891, pages 173, 174.]

Exceptions.

ARTICLE 186a. The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before nine o'clock A. M., nor to the sale of burial or shrouding material, newspapers, ice, ice-cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day, nor to the keepers of drug stores, hotels, boarding-houses, restaurants, livery stables, bath houses, ice dealers, nor to telegraph, or telephone offices.

[General Laws of Texas, 1905, chapter 165, page 399.]

Approved May 2, 1905.

Horse-racing and betting on Sunday unlawful.

SECTION 4. If any owner or lessee of any horse shall engage in horse-racing on Sunday, or if any person shall wager or bet, or accept any tender or offer to bet on any horse-race on Sunday, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred dollars, and not more than five hundred dollars, each horse-race and each wager or bet or offer to bet, or acceptance and tender made on Sunday as aforesaid, shall constitute a separate offense. Any court officer, or tribunal having jurisdiction of the offenses enumerated in the preceding sections, or any district or county attorney, may subpœna persons and compel their attendance as witnesses to testify as to the violation of any of the provisions of the foregoing sections. Any person so summoned and examined shall not be liable to prosecution for any violation of said section about which he may testify, and for any offense enumerated

in the foregoing sections a conviction may be had upon the unsupported evidence of an accomplice or participant.

[Sayles's Annotated Statutes of Texas, 1898, volume i.]

ARTICLE 1180. CIVIL SUITS NOT TO BE INSTITUTED ON SUNDAY, ETC. No civil suit shall be commenced, nor shall any process be issued or served on Sunday or on any legal holiday, except in cases of injunction, attachment, garnishment, sequestration, or distress proceeding.

No civil suits on Sunday.

[General Laws of Texas, 1905, chapter 11, page 14.]

LEGAL HOLIDAYS.

SECTION 1. *Be it enacted by the Legislature of the State of Texas:* That article 2939 of the Revised Civil Statutes of the State of Texas be and the same is hereby amended so as to read as follows:

ARTICLE 2939. The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the third day of June, the fourth day of July, the first Monday in September, and the twenty-fifth day of December of each year, all days appointed by the President of the United States, or by the Governor of this State, as days of fasting or thanksgiving, and every day on which an election is held throughout the State, are declared holidays, on which all public offices of the State may be closed, and shall be treated and considered as Sunday, or the Christian Sabbath, for all purposes regarding the presenting for payment or acceptance and of protesting for, and giving notice of, the dishonor of bills of exchange, bank checks, and promissory notes placed by the law upon the footing of bills of exchange.[1]

Approved Feb. 9, 1905.

Holidays.

ARTICLE 3716. REGULATIONS AS TO WORK. Convicts sentenced to hard labor shall be kept at work, under such rules and regulations as may be adopted; but no labor shall be required of any convict on Sunday, except such as is absolutely necessary, and no greater amount of labor shall be required of any convict than a due regard for his physical health and strength may render proper. . . .

Convicts not required to labor on Sunday.

ARTICLE 3733. TO LABOR ON PUBLIC WORKS, ETC. County convicts shall be put to labor upon the public roads, bridges, or other public work of the country, when their labor can not be utilized in the county workhouse or farm, and they shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted.

Sunday excepted.

[1] If Sunday, in its legal aspect, is only a civil holiday, as some contend, why should it not, so far as the State is concerned, be "treated and considered" as are the other holidays here enumerated? Though set apart by the State, ordinary business, labor, and trade on them are not prohibited and made penal offenses. Their observance is optional and voluntary. This law does not even require the closing of the "public offices of the State" on these holidays, but simply says that they "*may* be closed." But Sunday laws make the closing of private offices even, on Sunday, *compulsory*.

Why treat one civil holiday differently from another?

[Bates's Annotated Civil Statutes of Texas, 1895, volume ii, page 597.]

Sunday services for convicts.

ARTICLE 3690. The chaplain shall preach at least once every Sunday to the convicts, and shall establish such associations, Sabbath schools, and other schools for the benefit of the convicts as he may deem proper, having due regard to the rules of the prison, and being careful not to conflict in any manner with the discipline of the prison and the regular hours for labor.

UTAH.

[Compiled Laws of Utah, 1907.]

Unnecessary labor on Sunday a misdemeanor.

SECTION 4238. PERFORMING UNNECESSARY LABOR OR BUSINESS ON SUNDAY. Every person who performs any unnecessary labor or does any unnecessary business on Sunday is guilty of a misdemeanor and shall be fined in any sum not exceeding twenty-five dollars.

Exception.

SECTION 4239. ID., EXCEPTION. Labor performed by employees of such works as are usually kept in constant operation, and in irrigating, is not included in the foregoing section.

Sunday defined.

SECTION 4240. WHEN SUNDAY BEGINS AND ENDS. For the purpose of this title, Sunday shall commence at midnight Saturday and terminate the following midnight.

SECTION 1250. SUNDAY SELLING. Any person licensed as aforesaid, or any person neglecting or refusing to obtain a license, as herein provided, who shall either:

Liquor selling on Sunday.

1. Sell, give away, or otherwise dispose of any intoxicating drink at any time during the first day of the week, commonly called Sunday, except for medical purposes upon the prescription of a physician . . . shall be deemed guilty of a misdemeanor, and shall be punished by a fine in any sum less than three hundred dollars, or by

Penalty.

imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment, at the discretion of the court. . . .

VERMONT.

[Public Statutes of Vermont, 1906.]

Business, labor, and amusements unlawful on Sunday.

SECTION 5955. BY UNNECESSARY WORK, VISITING PUBLIC RESORTS, ETC., FOR AMUSEMENT. A person who, between twelve o'clock Saturday night and twelve o'clock the following Sunday night, exercises any business or employment, except works of necessity and charity, or holds or resorts to a ball or dance, or uses or exercises a game, sport, or play, or resorts to a house of entertainment for amusement or recreation, shall be fined not more than two dollars.

Permissible railroading.

SECTION 5956. RAILROAD COMMISSIONERS MAY AUTHORIZE RUNNING OF THROUGH TRAINS. The Board of Railroad Commissioners may authorize the running upon any railroad of such through trains

on Sunday as, in the opinion of said board, the public necessity and convenience may require, having regard to the due observance of the day.

SECTION 5957. HUNTING OR DISCHARGING FIREARMS. A person who hunts, shoots, pursues, takes, or kills wild game or other birds or animals, or discharges firearms, except in the just defense of person or property, or in the performance of military or police duty, on Sunday, shall be imprisoned not more than two months or fined not more than one hundred dollars nor less than ten dollars.

Hunting and shooting forbidden.

SECTION 5130. CONDITIONS OF LICENSE. . . . That no liquor be sold or furnished on Sunday. . . .

No liquor selling on Sunday.

SECTION 5848. ENTERING WITH INTENT TO ROB OR INJURE. A person who willfully commits a trespass by entering upon the garden, orchard, or other land of another, on which fruit trees are grown, without permission of the owner thereof, and with intent to cut, take, carry away, destroy, or injure the trees, fruit, or vegetables therein, shall be imprisoned not more than thirty days or fined not more than twenty dollars; and if the offense is committed on Sunday, or in disguise, or secretly between sunset and sunrise, the imprisonment shall not be less than five days, nor the fine less than five dollars. A justice of the county within which the offense is committed shall have jurisdiction to try and determine the same.

Trespassing on Sunday.

VIRGINIA.

[Code of Virginia, 1904, volume i, page 770.]

OF RELIGIOUS FREEDOM.

SECTION 1394. ACT OF RELIGIOUS FREEDOM RECITED. The General Assembly, on the sixteenth day of December, seventeen hundred and eighty-five, passed an act in the words following, to wit:

Act of 1785, framed by Thomas Jefferson.

See page 132.

"*Whereas,* Almighty God hath created the mind free; that all attempts to influence it by temporal punishment, or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy Author of our religion, who, being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his almighty power to do; that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who, being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavoring to impose them on others, have established and maintained false religions, over the greatest part of the world, and through all time; that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical, and even the forcing him to sup-

"Act of religious freedom."

Compulsory support to religion tyrannical,

port this or that teacher of his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor whose morals he would make his pattern, and whose powers he feels most persuasive to righteousness, and is withdrawing from the ministry those temporary rewards which, proceeding from an approbation of their personal conduct, are an additional incitement to earnest and unremitting labors, for the instruction of mankind; that our civil rights have no dependence on our religious opinions any more than our opinions in physics or geometry; that therefore the proscribing any citizen as unworthy the public confidence by laying upon him an incapacity of being called to offices of trust and emolument, unless he profess or renounce this or that religious opinion, is depriving him injuriously of those privileges and advantages to which, in common with his fellow citizens, he has a natural right; that it tends only to corrupt the principles of that religion it is meant to encourage, by bribing, with a monopoly of worldly honors and emolument, those who will externally profess and conform to it; that though, indeed, those are criminal who do not withstand such temptation, yet neither are those innocent who lay the bait in their way; that to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles, on supposition of their ill tendency, is a dangerous fallacy, which at once destroys all religious liberty, because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own; that it is time enough for the rightful purposes of civil government, for its officers to interfere, when principles break out into overt acts against peace and good order; and finally the truth is great and will prevail, if left to herself; that she is the proper and sufficient antagonist to error, and has nothing to fear from the conflict, unless by human interposition disarmed of her natural weapons, free argument and debate, errors ceasing to be dangerous when it is permitted freely to contradict them:

Religious tests deprive citizen of natural rights.

Tends to corrupt religion itself.

An unworthy inducement.

A dangerous fallacy.

Truth unaided, powerful, and will prevail.

"*Be it enacted by the General Assembly*, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened, in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

No compulsion in matters of religion.

"And though we well know that this Assembly, elected by the people for the ordinary purposes of legislation only, have no power to restrain the acts of succeeding assemblies constituted with powers equal to our own, and that, therefore, to declare this act to be irrev-

Act not irrevocable.

ocable would be of no effect in law; yet we are free to declare, and do declare, that the rights hereby asserted are of the natural rights of mankind, and that if any act shall be hereafter passed to repeal the present, or to narrow its operation, such act will be an infringement of natural right."[1] Code 1849, pages 358-360, chapter 76, section 1.

[As Amended by Act Approved March 11, 1908. In force from June 26, 1908.]

SECTION 3799. VIOLATION OF THE SABBATH; HOW PUNISHED. If a person on the Sabbath day be found laboring at any trade or calling, or employ his apprentices or servants in labor or other business, except in household or other work of necessity or charity, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than five dollars for each offense. Every day any person or servant or apprentice is so employed shall constitute a distinct offense, and the court in which or the justice by whom any judgment of conviction is rendered may require of the person so convicted a recognizance in a penalty of not less than one hundred or more than five thousand dollars, with or without security, conditioned that such person shall be of good behavior, and especially to refrain from repetition of such offense, for a period not exceeding twelve months.[2]

Labor on Sunday a misdemeanor.

High bond.

SECTION 3800. EXCEPTION AS TO THE JEWS.[3] The forfeiture, declared by the preceding section, shall not be incurred by any person who conscientiously believes that the seventh day of the week ought

Sabbatarians exempted.

[1] "This section and the constitutional provisions put all religions on a footing of perfect equality, protecting all, imposing neither burdens nor civil incapacities on any, conferring privileges upon none, proclaiming to all of our citizens that henceforth our religious thoughts and conversations shall be as free as the air they breathe, that the law is of no sect in religion, has no high priest but justice, declaring to the Christian and Mahometan, to the Jew and the Gentile, to the epicurean and the Platonist (if such there be among us), that so long as they keep within its pale all are equally objects of its protection; securing safety to the people, safety to the government, safety to religion (leaving reason free to combat error), securing purity of faith and practice far more effectually than by clothing the ministers of religion with exclusive temporal privileges, and exposing them to the corrupting influence of power." Perry's case, 3 Grat., 632. In this case it was sought to reject a witness because he did not believe in future rewards and punishments. The court decided that this fact did not incapacitate him as a witness.

All religions on equal basis.

Ministers and temporalities.

[2] In view of the preceding "act of religious freedom," just given, which still appears on the latest statute books of Virginia, as a monument of the noble principles of religious liberty wrought out by the fathers of the Revolution, how inconsistent and out of place appears such a law as this, penalizing and making a misdemeanor honest labor on what the law denominates "the Sabbath day."

Present law inconsistent.

[3] This law is in strong contrast with the views of Virginia's early statesmen, Jefferson and Madison, on religious legislation and exemptions. See pages 111, 123, 182. This, while leaning to the humane and liberal side, is still of the nature of toleration, and the very necessity of it shows the law

to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief, to do secular work or business on a Sunday, and does not on that day disturb any other person.

Prohibition of transportation.

SECTION 3801. WHAT TRANSPORTATION, ETC., BY RAILROADS ON SUNDAY PROHIBITED. No railroad company, receiver, or trustee controlling or operating a railroad, shall, by any agent or employee, load, unload, run, or transport upon such road on a Sunday, any car, train of cars, or locomotive, nor permit the same to be done by any such agent or employee, except where such cars, trains, or locomotives are used exclusively for the relief of wrecked trains, or trains so disabled as to obstruct the main track of the railroad; or for the transportation of the United States mail; or for the transportation of passengers and their baggage; or for the transportation of live stock; or for the transportation of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; *Provided, however,* that if it should be necessary to transport live stock or perishable articles on a Sunday to an extent not sufficient to make a whole train load, such train load may be made up with cars loaded with ordinary freight.

Exceptions.

SECTION 3802. WHAT TIME THE WORD "SUNDAY" IN THE PRECEDING SECTION EMBRACES. The word "Sunday" in the preceding section shall be construed to embrace only that portion of the day between sunrise and sunset; and trains *in transitu* having started prior to twelve o'clock on Saturday night, may, in order to reach the terminus or shops of the railroad, run until nine o'clock the following Sunday morning, but not later.

Sunday defined.

SECTION 3803. VIOLATIONS OF SECTION 3801; WHERE AND HOW PUNISHED. Any railroad company, receiver, or trustee violating the provisions of section 3801, shall be deemed to have committed a separate offense in each county or corporation in which such car, train of cars, or locomotive shall run, or in which such car or train of cars shall be loaded or unloaded; and shall be fined not less than fifty nor more than one hundred dollars for each offense.

Penalty.

Steamboat unloading on Sunday unlawful.

SECTION 3803a. TO PROHIBIT THE LOADING AND UNLOADING OF STEAMSHIPS' AND STEAMBOATS' CARGOES ON A SUNDAY. No steamboat company shall by any agent or employee load or unload on a Sunday any steamship or steamboat arriving at any port or landings on the

itself requiring it to be out of place. While aiming not to override conscientious convictions, it still throws a special guard about the Sunday and its observance, thus discriminating in religion and matters of conscience. According to its caption it was made solely for "the Jews;" but there are hundreds of Christians in Virginia who conscientiously observe the seventh day of the week, the day specified in the law of God. As late as October, 1910, one of these was arrested, convicted, and fined at Colonial Beach, for performing ordinary, quiet work on Sunday, which shows the worthlessness, in this case at least, of such exemptions. See page 729.

bays, rivers, or other waters of this State, or permit the same to be done by any such agent or employee except where such steamship or steamboat is for the transportation of the United States mails, or for the transportation of passengers and their baggage, or for the transportation of through freight *in transitu*, or of live stock, or of articles of such perishable nature as would be necessarily impaired in value by one day's delay in their passage; *Provided*, that nothing in this act shall be construed as preventing any steamship or steamboat arriving at any port or landing on the bays, rivers, and other waters of this State not its final point of destination, from unloading any and all freight intended for delivery at such intermediate port or landing, or from loading and taking on any and all freight intended for shipment from such intermediate port or landing, to the final destination of said steamship or steamboat. Any steamship or steamboat company violating the provisions of this act shall be deemed to have committed a separate offense in each county or corporation in which said steamship or steamboat shall land and be unloaded, and shall be fined in a sum not less than fifty nor more than one hundred dollars for each offense.

Sunday saloons prohibited.

SECTION 3804. SALE OF INTOXICATING LIQUORS ON SUNDAY, ETC.; HOW PUNISHED. No barroom, saloon, or other place for the sale of intoxicating liquors shall be opened, and no spirituous, malt, or intoxicating liquors shall be sold in any barroom, restaurant, saloon, store, or other place between twelve o'clock on any Saturday night and sunrise of the succeeding Monday morning.

Penalty.

Any person violating the provisions of this shall, upon conviction, be fined not less than one hundred, nor more than five hundred dollars, and the license of the place where the sale was so made shall be revoked.

Carrying firearms on Sunday.

SECTION 3806. CARRYING DANGEROUS WEAPONS TO PLACE OF RELIGIOUS WORSHIP, OR ON SUNDAY AT PLACE OTHER THAN HIS OWN PREMISES; HOW PUNISHED. If any person carry any gun, pistol, bowie-knife, dagger, or other dangerous weapon, to a place of worship while a meeting for religious purposes is being held at such place, or without good and sufficient cause therefor, carry any such weapon on a Sunday at any place other than his own premises, he shall be fined not less than twenty dollars. If any offense under this section be committed at a place of religious worship, the offender may be arrested on the order of a conservator of the peace, without warrant, and held until a warrant can be obtained, but not exceeding three hours. It shall be the duty of every justice, upon his own knowledge, or upon the affidavit of any person, that an offense under this section has been committed, to issue a warrant for the arrest of the offender.

SECTION 2070a. WHEN AND HOW UNLAWFUL TO HUNT, ETC. . . . (3) It shall be unlawful . . . to shoot or hunt any game in this State on Sunday.

Fishing on Sunday

SECTION 2091. PENALTY FOR FISHING WITHIN ANY REGULARLY HAULED FISHING LANDING, OR ON SUNDAY IN POTOMAC RIVER, ETC. . . . Nor shall any such owner or occupier, or any other person or persons, lay out and fish with any seine or net in the Potomac River or its tributaries, between five o'clock on Sunday morning and five o'clock on Monday morning; any person offending against any provision of this section shall be subject to the penalties and forfeitures prescribed by the next succeeding section of this chapter and to the other provisions of said section; and the same shall be in force from and after the enactment of a similar law by the State of Maryland.

Assistance for making arrests authorized.

SECTION 2092. HOW THE LAW ENFORCED. The owners or occupiers of the regularly hauled fishing landings are authorized to render any sheriff or other officer assistance necessary to arrest any person violating the provisions of the two preceding sections; and the said officer shall seize all boats, seines, and fixtures in the possession of such person, and carry the person so arrested before some justice of the peace, to be dealt with as herein directed, and the said officer may summon the posse *comitatus* to aid him in making arrests or seizure authorized by this act, and may, for that purpose, also press, at the expense of the prosecutor, any steamboat or other vessel belonging to any citizen of the State not actually engaged in carrying the United States mail.

Holidays as Sunday.

SECTION 2844. By the provisions of this section holidays are to be "considered and treated as a Sunday."

Liquor selling on Sunday unlawful.

[APPENDIX, volume ii, page 2264, provides that any officer, member, or employee of social clubs "who sell alcoholic or spirituous beverages of any kind or description on Sunday shall be guilty of a misdemeanor, and upon conviction shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense, and shall be imprisoned not less than fifteen nor more than sixty days in jail, and the charter and license of the club shall be declared forfeited as hereinbefore provided."]

Jurisdiction.

SECTION 4106. WHAT CRIMINAL OFFENSES POLICE JUSTICES AND JUSTICES OF THE PEACE MAY TRY. The several police justices and justices of the peace, in addition to the jurisdiction exercised by them as conservators of the peace, . . . shall have exclusive original jurisdiction for the trial of all other misdemeanor cases occurring within their jurisdiction in their respective magisterial districts, in all which cases the punishment may be the same as the circuit courts of the counties and the corporation or hustings courts of the corporations are authorized to impose.

Convicts confined Sunday.

SECTION 4142. HOW CONVICTS TO BE CONFINED AT NIGHT AND ON SUNDAY. Each convict shall be locked up during the night and every Sunday (except to attend religious service), and when the number of apartments will permit, each separately, unless in the hospital.

WASHINGTON.

[Ballinger's Annotated Codes and Statutes of Washington, 1897, 1903 Supplement.]

Approved March 7, 1903.

SECTION 7251a. BARBERING ON SUNDAY. That it shall be unlawful for any person, persons, or corporation to carry on the business of barbering on Sunday.

Barbering on Sunday a misdemeanor.

Any person or persons violating the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of ten dollars or imprisonment in the county jail for five days for the first offense, and by a fine of not less than twenty-five dollars nor more than fifty dollars, or imprisonment in the county jail, for not less than ten days nor more than twenty-five days for the second and each subsequent offense.

SECTION 7250. PLACES OF AMUSEMENT TO BE CLOSED ON SUNDAY. Any person who shall keep open any play-house or theater, race-ground, cock pit, or play at any game of chance for gain, or engage in any noisy amusements, or keep open any drinking or billiard saloon, or sell or dispose of any intoxicating liquors as a beverage, on the first day of the week, commonly called Sunday, shall, upon conviction thereof, be punished by a fine of not less than thirty dollars nor more than two hundred and fifty dollars. All fines collected for violation of this section shall be paid into the common school fund.

Sunday amusements prohibited.

SECTION 7251. BUSINESS HOUSES TO BE CLOSED ON SUNDAY. It shall be unlawful for any person or persons of this State to open on Sunday for the purpose of trade or sale of goods, wares, and merchandise, any shop, store, or building, or place of business whatever; *Provided*, that this section shall apply to hotels only in so far as the sale of intoxicating liquors is concerned, and shall not apply to drug stores, livery stables, or undertakers. Any person or persons violating this section shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars.

Trade on Sunday unlawful.

SECTION 7252. OFFICERS TO PROSECUTE VIOLATORS OF SUNDAY LAWS. It shall be the duty of any and all public officers of this State, knowing of any violation of this chapter, to make complaint, under oath, to the nearest justice of the peace of the county in which the offense was committed. Any public officer who shall refuse or willfully neglect to inform against and prosecute offenders against the last preceding section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, and the court before which such officer shall be tried shall declare the office or appointment held by such officer vacant for the remainder of his term.

Officers must inform.

Failure to inform a misdemeanor.

SECTION 7077. SUNDAY RIOTS, FIGHTING, ETC.—JURISDICTION. If any person be found on the first day of the week, commonly called

Disturbance.

Sunday, engaged in any riot, fighting, or offering to fight horse racing, or dancing, whereby any worshiping assembly or private family are disturbed, every person so offending shall on conviction be fined in the sum of not to exceed one hundred dollars, to be recovered before any justice of the peace in the county where such offense is committed, and shall be committed to the jail of said county until the said fine, together with the costs of prosecution, shall be paid.

WEST VIRGINIA.

[West Virginia Code, 1906.]

Secular employments prohibited on Sunday.

SECTION 4367. SABBATH-BREAKING. If a person, on a Sabbath day, be found laboring at any trade or calling, or employ his minor children, apprentices, or servants in labor or other business, except in household or other work of necessity or charity, he shall be fined not less than five dollars for each offense. And every day any such minor child, or servant, or apprentice is so employed, shall constitute a distinct offense. And any person found hunting, shooting, or carrying firearms on the Sabbath day, shall be guilty of a misdemeanor, and fined not less than five dollars.

Exceptions.

SECTION 4368. No forfeiture shall be incurred under the preceding section for the transportation on Sunday of the mail, or of passengers and their baggage, or for running any railroad train or steamboat on the Sabbath day, or for carrying firearms, or shooting on that day, by any person having the right to do so under the laws of the United States or of this State; and no forfeiture for laboring on the Sabbath day shall be incurred under the said section, by any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day, provided he does not compel an apprentice or servant not of his belief to do secular work or business on Sunday, and does not on that day disturb any other person in his observance of the same. And no contract shall be deemed void because it is made on the Sabbath day.[1]

Sabbatarians exempted.

Sunday contracts valid.

Intoxicants.

SECTION 933. SALE OR GIFT ON SUNDAY. . . . If he permit any person to drink to intoxication on any premises under his control, or shall sell or give an intoxicating drink to any one on Sunday, . . . he shall be guilty of a misdemeanor, and fined not less than twenty nor more than one hundred dollars for the first offense; and not less than forty dollars nor more than two hundred dollars for the second

[1] This last provision is directly contrary to the usual declarations concerning contracts on Sunday. But why should not men be held as responsible for what they do or pledge to do on Sunday as on any other day? A marriage contract made on Sunday would not be supposed to be invalidated because of the day when made. Why should any other contract made on that day? See pages 412, 413, 565.

offense; and may in the discretion of the court, in addition to such fine for the second offense, be confined in jail not more than sixty days. Upon conviction for the second offense the court in which the conviction is had, may revoke the license of such person, and a sale thereafter by him shall be a sale without a license; and no license shall be afterward granted such person.

WISCONSIN.

[Wisconsin Statutes of 1898, Annotated by Sanborn and Berryman.]

SECTION 1564. SALE ON SUNDAY AND ELECTION DAY. If any tavern-keeper or other person shall sell, give away, or barter any intoxicating liquors on the first day of the week, commonly called Sunday, or on the day of the annual town meeting or the biennial fall election, such tavern-keeper or other person so offending shall be punished by a fine of not less than five nor more than twenty-five dollars, or by imprisonment in the county jail not to exceed thirty days, or by both such fine and imprisonment.

Liquor selling on Sunday.

SECTION 4276a. PUBLICATION ON SUNDAY; NEED NOT BE ON SAME DAY OF EACH WEEK. Any notice, advertisement, statement, or publication required by law or the order of any court to be printed or published in any newspaper may be printed and published in a newspaper printed on Sunday, and such printing and publication shall be a lawful publication and a full compliance with the order of the court or officer ordering such publication, the same to all intents and purposes as though the same had been printed and published in a newspaper printed on a secular day; and any such notice, advertisement, statement, or publication that may, by law or the order of any court, be required to be published for any given number of weeks, may be published on any day in each week of such term, and if so published as many weeks and as many times in each week as may be required by such law or order, the same shall be as lawful a publication thereof, and as full a compliance with the order of such court or officer, as if the same had been printed and published on the same day of each such week.

Sunday notices legal.

SECTION 4278. PROCESS NOT TO BE SERVED SUNDAY. No person shall serve or execute any civil process from midnight preceding to midnight following the first day of the week; and any such service shall be void; and any person serving or executing any such process shall be liable in damages to the party aggrieved in like manner and to the same extent as if he had not had any such process.

No civil processes on Sunday.

SECTION 4279. NOR ON SATURDAY, WHEN. Whenever an execution or other final process shall be issued against the property of any person who habitually observes the seventh day of the week, instead of the first, as a day of rest, the officer to whom such process shall be directed shall not levy upon or sell any property of any such person on

Exemption for observers of seventh day.

the seventh day of the week; *Provided,* that said person shall deliver to such officer an affidavit in writing, setting forth the fact that he habitually keeps and observes the seventh day of the week instead of the first, as a day of rest, any time before such levy or at least two days before such sale, as the case may be; and such sale may, at the time appointed therefor, be adjourned to any day within the life of the execution, or such execution may be renewed as in other cases.

Approved June 5, 1909.

Acts prohibited on Sunday.

SECTION 4595. VIOLATION OF SUNDAY. Any person who shall keep open his shop, warehouse, or workhouse, or shall do any manner of labor, business, or work, except only works of necessity and charity, or be present at any dancing or public diversion, show, or entertainment, or take part in any sport, game, or play on the first day of the week, shall be punished by fine not exceeding ten dollars; and such day shall be understood to include the time between the midnight preceding and the midnight following the said day, and no civil process shall be served or executed on said day. *Provided, however,* that keeping open a barber shop on Sunday for the purpose of cutting hair and shaving beards shall not be deemed a work of necessity or charity.

Barbering prohibited.

SECTION 4596. OBSERVERS OF OTHER DAYS. Any person who conscientiously believes that the seventh, or any other, day of the week ought to be observed as the Sabbath, and who actually refrains from secular business and labor on that day, may perform secular labor and business on the first day of the week,[1] unless he shall willfully disturb thereby some other person or some religious assembly on said day.

Exemption for observers of another day.

WYOMING.

[Revised Statutes of Wyoming, 1899.]

SECTION 2391. Holidays falling on Sunday, the Monday following shall be a legal holiday, within the meaning of this article.

SECTION 2392. Sundays shall not be considered as business days within the meaning of this chapter, but no negotiable instrument shall be rendered invalid by reason of being dated on Sunday.

Definition.

SECTION 2642. SUNDAY DEFINED. For the purposes of this chapter the first day of the week, commonly called Sunday, shall begin with midnight Saturday and terminate the following midnight.

Liquor selling on Sunday.

SECTION 2643. SALOONS SHALL BE CLOSED ON SUNDAY AND ELECTION DAY. Every person or persons, company or corporation, having license to sell liquors under the laws of Wyoming, who shall keep

[1] What God's law *commands* men to do and gives them a perfect *right* to do (labor on the first day of the week), this law grants as a concession or special permission. It says they "may" perform secular labor, as though they would have no right to do so if the state did not give them permission. As to willfully disturbing others, no one has a right to do that on any day. That is wrong on any day, and needs no Sunday law to punish it.

open, or suffer his or their agent or employee to keep open, his or their place of business, or who shall sell, give away, or dispose of or permit another to sell, give away, or dispose of, on his or their premises, any spirituous, malt, vinous, or fermented liquors, or any mixtures of any such liquors, on the first day of the week, commonly called Sunday, or upon any day upon which any general or special election is being held, shall be guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five dollars or more than one hundred dollars, or imprisoned in the county jail not to exceed three months.

Places of business to be closed on Sunday.

SECTION 2644. BUSINESS PLACES SHALL BE CLOSED ON SUNDAY — EXCEPTIONS. It shall be unlawful for any person or persons, company or corporation, to keep open any barber shop, store, shop, or other place of business for the transaction of business therein, upon the first day of the week, commonly called Sunday; *Provided*, this section shall not apply to newspaper printing-offices, railroads, telegraph companies, hotels, restaurants, drug stores, livery stables, news depots, farmers, cattlemen and ranchmen, mechanics, furnaces or smelters, glass works, electric light plants, and gas works, the venders of ice, milk, fresh meat, and bread, except as to the sale of liquors and cigars.[1] Any person, company, or corporation who shall violate the provisions of this section, shall, on conviction thereof, be fined in a sum of money not less than twenty-five dolars [dollars], nor more than one hundred dollars, for each offense.

[1] Here is a sample of what is found, to a greater or less extent, in nearly all Sunday laws. At first all labor, business, and trade is prohibited; and then follows a list of exceptions, twenty, thirty, or more in number, as here, practically nullifying the law, giving those engaged in this trade and that trade, this business and that business, this occupation and that occupation, *permission* to continue their regular lines of work on Sunday. This, however, is only in harmony with the example set in the first notable Sunday law known to history, that of Constantine, in A. D. 321. This law commanded the judges, city people, and all tradesmen to rest on "the venerable day of the sun;" but it permitted "those dwelling in the country freely and with full liberty" to "attend to the culture of their fields." See page 752. Unlike the divine Sabbath law, which simply sets forth the great principle of six days devoted to our own work and the seventh to God; and the divine Word, which seeks to promote true Sabbath keeping by laying down broad principles rather than by entering into minute details, the makers of Sunday laws go into all sorts of details; assume to become conscience for other men; and not to say just who may and who may not work on Sunday; what lines of business may and what lines may not be conducted on that day; and what kinds of goods may be sold and what kinds may not be sold on the first day of the week. Instead of appealing to the divine law, to men's own conscientious convictions, and to the blessings resulting from true Sabbath-keeping, which, in the very nature of the case, must be voluntary, the authors of these laws appeal to human law; set up one man's conscience as a standard for the conduct of other men; and institute a forced Sabbath rest, which, to the obsequious and indifferent, means enforced idleness; and to those whose conscientious convictions differ with the standard thus set up, persecution. They intrude into the domains of conscience, and the inevitable results are religious legislation and persecuting proceedings.

Nullifying exceptions.

A false standard set up.

VIEWS OF PRESIDENT TAFT'S PASTOR.

Rev. U. G. B. Pierce, President Taft's Washington pastor, spoke wisely when he said:

A matter of conscience.

"I shall refuse to take up an attack on people who entertain on Sunday, because I believe the matter rests entirely with them, and no one should interfere. It is a question for a man's conscience to decide, and not for any other man to decide for him." Washington "Post," March 6, 1911.

THE CANADIAN LORD'S DAY ACT.

Thirty exceptions in Canadian Act.

The Canadian Lord's Day Act, which went into effect March 1, 1907, and which some of its friends, in spite of its name and general character, declare only a civil law, contains no less than thirty exceptions. Speaking in defense of this law, Rev. J. J. Roy, of Winnipeg, revealed its true character and object. He said:

"It is incumbent upon the state so to legislate in a general way, and in a special way, and restrict individual liberty of action on Sunday that undermines the Christian religion and the religious observance of the Sabbath." "Should Parliament Prescribe Your Religion?" page 6.

According to this, the personal liberty of the individual is to be sacrificed one day of the seven in order that through a statutory law the *Christian religion* may be fostered, and the *religious* observance of Sunday promoted. And still such laws are not religious, and do not interfere with individual liberty!

THE PLAIN LESSON OF HISTORY.

A Roman Catholic contributor to the "Catholic Standard and Times," of October 30, 1908, signing himself Ardee, makes the following earnest protest against the enslavement of conscience under religious laws:

"A persecuting policy is an anachronism. There must be an end of it. Humanity cries out against it; patriotism denounces it as antinational; it is an evil that tells against the interests of all classes. If history is of any value, the plain lessons it teaches must be taken to heart, and one of the most imperative of them is the folly of attempting coercion in the domain of spiritual life. Any Englishman who cares for the reputation of his country must look with pain and horror upon the blood-stained pages of her annals disclosing fearful religious strife in which citizen acted toward citizen as a sort of human wolf. And what is true of England may be said of all Europe. The internecine warfare on the score of religion is an awful blot on men's Christianity — not indeed on Christianity itself, but on their modes of interpreting it."

A persecuting policy a menacing evil.

In a speech delivered in London June 3, 1876, Hon. Joseph Chamberlain said:

"Persecution is not inherent in religion. It is only imported into it when it becomes connected with the State." "A Present Danger," page 8.

CHARACTER OF SUNDAY LEGISLATION.

The persistence with which Congress has been besieged, even from an early date, for Sunday legislation, may be gathered from the fact that the petitions sent to Congress which called forth Col. Richard M. Johnson's first famous Sunday Mail Report, that of 1829, came from no less than twenty States, besides the District of Columbia, and from four hundred twenty different cities, towns, and localities throughout the country, and aggregated 467 in number. As in the fourth and fifth centuries Sunday laws were secured from the Roman emperors through the influence of the church bishops, so these petitions were sent out for signature, in the month of December, 1828, by "a most respectable committee, composed of gentlemen of different *religious denominations.*" "Memorials Presented to Congress During the Last Session," Boston, May, 1829, page 4. Their source indicated their character, and that of the legislation sought by them. Sunday laws are, always have been, and always will be religious.

Originators of the Sunday-law agitation of 1829-30.

PART VI.

Operation of Sunday Laws.

"Government is never the gainer in the execution of a law that is manifestly unjust. . . . Conscientious men are not the enemies, but the friends of any government but a tyranny. They are its strength, and not its weakness. Daniel, in Babylon, praying, contrary to law, was the true friend and supporter of the government; while those who, in their pretended zeal for the law and the Constitution, would strike down the good man, were its real enemies. It is only when government transcends its sphere, that it comes in conflict with the consciences of men."— *President Fairchild.*

OPERATION OF SUNDAY LAWS IN THE UNITED STATES.

For more than a hundred years the government of the United States has enjoyed a pre-eminence among the nations of the earth as a result of its recognition of the "unalienable rights" with which the Creator has endowed all men as a sacred and inviolable possession. Every other nation had played its part in violating those rights, so that every avenue of escape from the cruel hand of oppression seemed closed. But just then the government of the United States arose, and espoused the cause of human freedom, placing a guarantee of religious liberty in her Constitution, thereby inviting to her bosom the victims of ecclesiastical tyranny of every land.

Pre-eminence of national government.

But by persistent skill and subtlety, this monster scourge of the ages, religious persecution, seems determined to push its conquests into this last earthly asylum of soul liberty. And by no other means has this work been carried on here so persistently or so successfully as in the matter of the making, the preservation, and the enforcement of Sunday laws.

Evil elements at work here.

The matter contained in the preceding sections of this book shows conclusively the character of these laws. They are religious. And being religious, they afford the bigoted and intolerant a convenient means for persecuting those who differ with them in religion, and particularly in the matter of the Sabbath and Sabbath observance.

Notwithstanding the warning voice of history, bearing to us, like peals of thunder, the cries of the oppressed from ancient, mediæval, and modern nations, resulting from the enforcement of the religious opinions of the majority enacted into civil laws, still many are oblivious to the dangers of this same kind of legislation now, and are wont to inquire, "Where have Sunday laws resulted in religious persecution in this country?"

Many oblivious to danger.

That religious legislation is the same evil now as ever; that it operates in the United States the same as in other countries; and that Sunday laws here have already been seized upon by religious bigotry as convenient tools for persecution, and their enforcement resulted in religious oppression to conscientious observers of another day, the matter presented in the following pages abundantly testifies. It also very forcibly witnesses to the evil of allowing such laws to remain upon the statute books, and suggests the propriety and the absolute necessity of repealing these laws, as the true American principles and the plainest constitutional provisions demand. So long as these laws remain unrepealed, honest, innocent, industrious, and upright citizens are liable at any moment to be subjected to oppression, persecution, and hardship. Under such conditions, as Jefferson says, "a single zealot may commence persecution, and better men be his victims."

Bad laws should be repealed.

ARKANSAS.

In 1885 Arkansas had a Sunday law reading as follows:

"SECTION 1883. Every person who shall on the Sabbath, or Sunday, be found laboring, or shall compel his apprentice or servant to labor or perform service other than customary household duties of daily necessity, comfort, or charity, on conviction thereof shall be fined one dollar for each separate offense.

State Sunday law.

"SECTION 1884. Every apprentice or servant compelled to labor on Sunday shall be deemed a separate offense of the master.

"SECTION 1885. The provision of this act shall not apply to steamboats and other vessels navigating the waters of the State, nor such manufacturing establishments as require to be kept in continual operation.

"SECTION 1886. Persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this act, so that they observe one day in seven agreeable to the faith and practice of their church or society."

The exemption for Sabbatarians.

Sections 24 and 29 of the Arkansas Constitution, then, as now, read as follows:

"SECTION 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience, and no preference shall ever be given by law to any religious establishment, denomination, or mode of worship above any other."

Guarantees of religious freedom.

"SECTION 29. This enumeration of rights shall not be construed to deny or disparage others retained by the people; and to guard against any encroachments on the rights herein retained, or any transgression of any of the higher powers herein delegated, we declare that everything in this article is excepted out of the general powers of the government, and shall forever remain inviolate; and that all laws contrary thereto, or to the other provisions herein contained, shall be void."

Under these constitutional provisions, the State Sunday law should have been declared void; but instead of this, March 3, 1885, section 1886 of the Sunday law, exempting observers of another day,— the only redeeming or tolerant feature of the law,— was repealed. The alleged object of those who secured its repeal was to close the saloons. It was claimed that under cover of this section, certain Jews who kept saloons in Little Rock, had successfully defied the law against Sunday saloons, and that there was no way of securing the proper

Exemption repealed.

enforcement of the law except by the repeal of that section. Believing these representations, the legislators repealed the section.

But after its repeal, not a saloon in Little Rock was closed on Sunday, nor was there any attempt made to close one. Not a saloonkeeper was prosecuted. In its modified form, the law was used for no other purpose than to punish peaceable citizens who observed the seventh day as the Sabbath, and, in the exercise of their God-given right, worked on the other six days of the week, including Sunday. That the law was thus used is apparent from what follows.

How modified law was used.

CASE OF J. W. SCOLES.

D. A. Wellman and J. W. Scoles, two Seventh-day Adventist ministers, held meetings at Springdale, Arkansas, in the summer of 1884. As a result, a church of this faith was organized there the following year, and a church building erected. In addition to his subscription to the enterprise, Mr. Scoles agreed to paint the building. Concerning this he says:

"I worked at the church at odd times, sometimes half a day and sometimes more, as I could spare the time. The last Sunday in April, 1885, in order to finish the work so that I could be free to leave the next day for the summer's labor with the tent, I went to the church, and finished a small strip of painting on the south side of the house, clear out of sight of all public roads; here I quietly worked for perhaps two hours, in which time I finished it, and then went home. It was for this offense that I was indicted."

His offense.

At the fall term of the Circuit Court held at Fayetteville, Mr. J. A. Armstrong, of Springdale, a member of the newly organized church, was summoned before the Grand Jury. He was asked if he knew of any violations of the Sunday law. He said he did.

GRAND JURY: Who are they?

ARMSTRONG: The 'Frisco railroad is running trains every Sunday.

G. J.: Do you know of any others?

A.: Yes; the hotels of this place are open, and do a full run of business on Sunday, as on other days.

Not the parties wanted.

G. J.: Do you know of any others?

A.: Yes, sir; the drug stores and barber shops all keep open, and do business every Sunday.

G. J.: Do you know of any others?

A.: Yes; the livery stables do more business on Sunday than on any other day of the week.

After several repetitions of this form of questions and answers, this question was asked:

G. J.: Do you know of any Seventh-day Adventists who ever work on Sunday?

A.: Yes, sir.

After obtaining from the witness the names of his brethren, in-

dictments were found against five of them, himself and Mr. Scoles being of the number. The indictment against Mr. Scoles read as follows:

"STATE OF ARKANSAS
v. } Indictment.
J. W. SCOLES.

"The Grand Jury of Washington county, in the name and by the authority of the State of Arkansas, accuse J. W. Scoles of the crime of Sabbath-breaking, committed as follows; viz., the said J. W. Scoles on Sunday, the twenty-sixth day of April, 1885, in the county and State aforesaid, did unlawfully perform labor other than customary household duties of daily necessity, comfort, or charity, against the peace and dignity of the State of Arkansas.

"J. P. HENDERSON, Prosecuting Attorney."

Labor on Sunday a crime.

Upon trial, Mr. Scoles was convicted. An appeal was taken to the Supreme Court of the State. October 30, 1886, the judgment of the Circuit Court was affirmed by the Supreme Court, whereupon about twenty cases essentially the same as that of Mr. Scoles, which had been held over in the different Circuit Courts of the State awaiting the decision of Supreme Court, came up for trial. The leading facts concerning these cases follow.

JAMES A. ARMSTRONG.

Mr. Armstrong, a member of the Seventh-day Adventist church at Springdale, was indicted in November, 1885, for Sabbath-breaking, on the charge of digging potatoes in his field on Sunday. February 13, 1886, he was arrested and held under two hundred fifty dollar bonds for appearance at the May term of the Circuit Court. At the time of the alleged offense, Mr. Armstrong had a contract for building a schoolhouse at Springdale. A Mr. Millard Courtney, with a friend, went to Mr. Armstrong's house on Sunday, to negotiate a contract for putting the tin roof on the schoolhouse. They found Mr. Armstrong in his field digging potatoes. There the business was all talked over, and the contract for putting on the tin roof secured. Then this same Mr. Courtney became prosecuting witness against Mr. Armstrong for working on Sunday. At his trial at Fayetteville, Mr. Armstrong was convicted, his fine and costs, amounting to $26.50, were paid, and he was released.

The prosecuting witness transacted business on Sunday.

JAMES A. ARMSTRONG, THE SECOND TIME.

July 9, 1886, Mr. Armstrong was arrested the second time at Springdale, for working on Sunday, June 27, and was taken before Mayor S. L. Staples for trial. Mr. Armstrong called for the affidavit on which the writ was issued. The mayor stated that he himself had seen Mr. Armstrong at work in his garden on Sunday, a Mr. A. J. Vaughn having called his attention to Mr. Armstrong while he

was at work, and said, "Now see that you do your duty." This, the mayor said, made an affidavit unnecessary. Mr. Armstrong was fined one dollar and costs, amounting to $4.65. In default of payment, the mayor ordered him sent to the county jail, allowing him one dollar a day until the fine and costs were paid. Within four hours from the time of his arrest, Mr. Armstrong, in charge of the marshal, was on his way to the jail at Fayetteville. He was locked up with another prisoner, with nothing but a little straw and a dirty blanket about thirty inches wide for a bed for both. The next night, he was allowed to lie in the corridor on the brick floor, with his alpaca coat for a bed, and his Bible for a pillow. The third night, a friend in town furnished him a quilt and a pillow. On the fourth night, his friend brought him another quilt, and thus he was made comfortable. On the fifth day, at noon, he was released. Upon his return to Springdale, the mayor notified Mr. Armstrong that his fine and costs were not satisfied, and that unless they were paid within ten days, an execution would be issued and his property sold. Mr. Armstrong filed an appeal to the Circuit Court. The appeal was sustained, and Mr. Armstrong was released from further penalty.

Mayor urged to prosecute.

Bible for a pillow.

Circuit Court sustained appeal.

F. N. ELMORE.

Mr. Elmore, of Springdale, was indicted March, 1886, on the charge of Sabbath-breaking. The indictment charged him with having violated the Sunday law by working on Sunday, November 1, 1885. He was arrested in April, 1886, and held under two hundred fifty dollar bonds. Mr. Millard Courtney, the only witness examined at his trial, testified that he had seen Mr. Elmore digging potatoes on the premises of Mr. Armstrong, on the day when he and his friend went to Mr. Armstrong's to secure from him the contract for putting the tin roof on the schoolhouse. This is how he knew Mr. Elmore had worked on that day. Mr. Elmore was convicted, paying his fine and costs, amounting to $28.95.

How he knew.

ALLEN MEEKS.

Mr. Meeks, of Star of the West, had been a resident of Arkansas since 1856, and had held the office of justice of the peace for a number of years both before and after the war. After becoming an observer of the seventh day, he was indicted in July, 1885, for Sabbath-breaking, and placed under five hundred dollar bonds for his appearance for trial in January, 1886. The offense charged was that of planting potatoes on Sunday the latter part of March. The work was done near his own home, and not less than two and one-half miles from the nearest public road or place of public worship. A Mr. La Fever and wife had come to visit him, finding him engaged as stated. He at once stopped work, and spent the rest of the day visiting with Mr. La Fever, who afterward reported him to the Grand

$500 bonds.

Visitors inform on him.

Jury. The case was held over pending the decision of the Supreme Court in the Scoles case.

ALLEN MEEKS, THE SECOND TIME.

Fixed a wagon brake.

January, 1886, Mr. Meeks was indicted the second time, the offense charged being that of fixing his wagon brake on Sunday. He was reported to the Grand Jury by Mr. Riley Warren, who had gone to Mr. Meeks's house on the Sunday referred to, to see him about hiring a teacher for the public school, both men being members of the school board. In the course of their conversation, Mr. Meeks incidentally mentioned having mended his wagon brake that morning. This was reported by Mr. Warren to the Grand Jury, and the indictment followed. At his trial in January, 1887, Mr. Meeks was assessed the usual fine and costs, which he paid.

WILLIAM L. GENTRY.

Prosecuted for plowing on Sunday.

Mr. Gentry, of Star of the West, and a citizen of Arkansas since 1849, had served as justice of the peace for eight years and as associate justice of the county court for two years. He had been an observer of the seventh day since 1877. January, 1886, he was indicted for Sabbath-breaking on the charge of plowing on his farm on Sunday, July 2, 1885. He was arrested and held under five hundred dollar bonds. In January, 1887, his case was called for final trial, the Supreme Court of the State having rendered its decision in the Scoles case. Mr. Gentry was convicted, his fine and costs amounting to $28.80. He confessed judgment, but did not have the money to pay the fine and costs imposed. Judge Herne, before whom he was tried, ordered him kept in custody until these were paid. Having the confidence of the sheriff, Mr. Gentry was allowed the freedom of the town; but on the last day of court, he was notified by the sheriff that unless the fine and costs were paid he would be hired out, the laws of the State providing that in cases where parties fail to satisfy the demands of the law, they shall be put up by the sheriff and sold to the highest bidder, the bids being for the amount of wages to be paid per day. They are then worked under the same rules and regulations as convicts in the penitentiaries. Mr. Gentry, being sixty-five years old, and not wishing to submit to such barbarous treatment, paid two dollars, all the money he had, and gave his note for the remainder.

Gives note.

JOHN A. MEEKS.

A boy prosecuted.

John A. Meeks, of Star of the West, fourteen years of age, son of Jesse L. Meeks, was indicted January, 1886, for Sabbath-breaking, the offense charged being that of shooting squirrels on Sunday. The place where the squirrels were shot was in a mountainous district entirely away from any public road or place of public worship. He

was reported by Mr. M. Reeves. The sons of the latter were hauling wood with a team on that same Sunday, and were present with the Meeks boy in the woods, and scared the squirrels around the trees for the Meeks boy to shoot. When the sport was over, the Meeks boy divided the game with the Reeves boys. Then the father of the latter reported the Meeks boy, and he was indicted. At his trial in January, 1887, he was fined five dollars and costs, amounting in all to twenty-two dollars. The fine was paid, and the boy was released.

Prosecutor's sons hauled wood on Sunday.

P. A. PANNELL.

Mr. Pannell, of Star of the West, was indicted January, 1886, for Sabbath-breaking, upon the charge of plowing in his field on Sunday. He was arrested, and held under bonds of two hundred fifty dollars. At his trial in January, 1887, he was convicted, his fine and costs amounting to $28.80. Not being able to pay this amount, he was kept in jail four days, and then informed that unless some satisfactory arrangements were made, he would be sold, and put out to work out his fine and costs at seventy-five cents a day. Mr. Pannell paid two dollars in money and gave his note for the remainder, whereupon he was released.

Gave note.

J. L. JAMES.

Mr. James, of Star of the West, an observer of the seventh day, was indicted January, 1886, for Sabbath-breaking, on the charge of doing carpenter work on Sunday. The indictment was founded upon the testimony of a Rev. Mr. Powers, a minister of the Missionary Baptist church. Mr. James was working on a house for a widow, who was a member of the Methodist church, and without any expectation of receiving payment, but wholly as a charitable act. He did the work in the rain, because the widow was about to be thrown out of the house in which she lived, and had no place to shelter herself and family. Mr. Powers, the informer, lived about six hundred yards from where the work was done, and on that very Sunday had carried wood from within seven rods of where Mr. James was at work, and chopped up the wood in sight of Mr. James. February, 1887, Mr. James was convicted, the usual fine and costs being imposed. These were paid by some of Mr. James's friends.

A minister the informer.

Informer chopped wood on Sunday.

J. L. MUNSON.

Mr. Munson, a Seventh-day Adventist, of Star of the West, was indicted July, 1886, for working on a Sunday in March, cutting briars out of the fence corners at the back of his field. He was indicted on the voluntary evidence of Rev. Jeff. O'Neal, a Free-will Baptist preacher. He was arrested and held under three hundred dollar bonds. At his trial in January, 1887, he was assessed the legal fine of one dollar and costs, amounting to $14.20, which he paid.

Another minister informer.

J. L. SHOCKEY.

Mr. Shockey, an observer of the seventh day, who had emigrated from Ohio to Arkansas in 1884, and settled on a piece of railroad land six miles north of Malvern, the county seat of Hot Spring county, was indicted for plowing in his field in April, 1885, a mile and three quarters from any place of public worship. He was observed by B. C. Fitzhugh and T. B. Sims, while the latter was hunting stock, and was reported to the Grand Jury by Anthony Wallace, a member of the Baptist church. He was placed under one hundred ten dollar bonds for his appearance for trial in February, 1886, when his case was continued, to await the decision of the Supreme Court in the Scoles case.

Plowing on Sunday.

A Baptist the informer.

J. L. SHOCKEY, THE SECOND TIME.

In August, 1886, Mr. P. C. Hammond, a member of the Baptist church, appeared before the Grand Jury in Hot Spring county and charged Mr. Shockey with hauling rails and clearing land on Sunday, July 11, 1886. He was indicted and on December 14 arrested and taken to Malvern and locked up until the next day, when he gave bonds and was released. On the day when the work complained of was performed, Mr. Hammond, the informer, passed by; after having gone some distance, he returned and spoke to Mr. Shockey about buying from him a Plymouth Rock rooster. The bargain was then made, Mr. Hammond agreeing to pay fifty cents for the rooster.

The informer buys a rooster on Sunday.

Previous to the time set for Mr. Shockey's trial, Mr. Dan T. Jones, president of the Missouri Conference of Seventh-day Adventists, had an interview with the prosecuting attorney, Mr. J. P. Henderson, and explained the nature of all these cases, and showed him that the men complained of were faithful, law-abiding citizens in every respect except in this matter of working on Sunday, which they considered no crime; that the defendants were all poor men, some of whom were utterly unable to pay any fines and costs and consequently would have to go to jail; and asked Mr. Henderson if he would be willing to remit a portion of his fees, which were ten dollars in each case, providing the remainder was raised by donations by Mr. Jones and his people. Mr. Henderson replied that if these cases were of the nature of religious persecution, he would not feel justified in taking any fees. He said he would not be a party to any such action, but wished a little time to investigate the cases to satisfy himself as to their true nature. Upon investigation, he became fully convinced that these prosecutions were simply of the nature of religious persecutions, and generously refused to take any fees in any of the cases. The county clerk reduced his fees about one-half, and the sheriff one-half of his; all of which quite materially lessened the total expenses. The remainder was raised by contributions supplied by friends of those prosecuted.

Prosecuting attorney convinced prosecutions are persecutions.

JAMES M. POOL.

Mr. Pool, another observer of the seventh day, was indicted, at Fayetteville, for Sabbath-breaking, in September, 1885. The only witness in this case was a Mr. J. W. Cooper, a member of the Presbyterian church, who went to Mr. Pool's house on Sunday morning to buy some tobacco, and found Mr. Pool hoeing in his garden. At his trial, Judge Pittman pronounced Mr. Pool guilty, and fined him one dollar and costs, amounting to $30.90.

The informer wished to buy tobacco on Sunday.

JAMES M. POOL, THE SECOND TIME.

Mr. Pool was indicted a second time at Fayetteville in September, 1886, and placed under bonds of two hundred fifty dollars for his appearance at court May 16, 1887. The clause exempting observers of the seventh day was restored before the day of the trial. He was tried, however, under the indictment, and fined one dollar and costs, amounting to $28.40, the court not being aware, it seems, of the restoration of the exemption.

JOE MC COY.

Mr. McCoy, of Magnet Cove, moved from Louisville, Kentucky, to Arkansas, in 1873. He served as constable seven years, and two terms as justice of the peace, in Hot Spring county. In 1884 he became a Seventh-day Adventist. August, 1885, he was indicted for Sabbath-breaking, the particular charge against him being plowing on Sunday. The witness against him was a Mr. Reatherford, a member of the Methodist church, who went into the field where Mr. McCoy was plowing, and spent several hours with him, walking around as he plowed. The work was done half a mile from any public road and entirely away from any place of public worship. In September Mr. McCoy was arrested and placed under bonds. Fearing that not only his small farm but his personal property would soon be consumed in paying fines and costs, he at first decided to leave the country; but a portion of his costs being remitted after his trial, and receiving some assistance from friends, he concluded to remain. With tears in his eyes, he said to a friend that while he was reckless and wicked he was not molested; but that as soon as he turned and began to live a religious life, he was prosecuted and fined for it.

Prosecuting witness a Methodist.

Inclined to leave country.

JOHN NEUSCH.

February, 1886, Mr. Neusch, of Magnet Cove, a fruit raiser, was indicted for gathering early peaches which were overripe and were in danger of spoiling, on Sunday, June 21, 1885. He was half a mile from any public road and some distance from any place of public worship, and not in sight of either. The only ones who saw him gathering the fruit were a brother and a man who came to see him in settlement for some peaches which had been stolen by a young

Picking peaches treated as a crime.

man from Mr. Neusch's orchard on the preceding Sunday, and to ask that the young man be not prosecuted. Mr. Neusch refused to take pay for the peaches, and promised to say nothing about the offense on condition it was not repeated. Following the decision of the Supreme Court in the Scoles case, Mr. Neusch confessed judgment, and paid fine and costs, amounting to twenty-five dollars. Mr. Neusch was an observer of the seventh day.

ALEXANDER HOLT.

A medical student fined sixteen dollars.

Mr. Holt, a Seventh-day Adventist of Magnet Cove, a medical student of the Memphis Hospital and Medical College, Memphis, Tennessee, was indicted in February, 1886, for having worked on a farm in the northern part of Hot Spring county on Sunday, October 11, 1885. The work performed was one mile from any place of public worship. At his trial at Malvern in February, 1887, he was convicted, his fine and costs amounting to sixteen dollars, which he paid.

WILLIAM H. FRITZ.

Worked in shop.

Mr. Fritz, of Hindsville, Madison county, was indicted in April, 1886, for Sabbath-breaking, and placed under two hundred fifty dollar bonds. The offense charged was that of working in his wood shop on Sunday. The shop was in the country, and two hundred yards from the public road. His fine and costs amounted to twenty-eight dollars. Mr. Fritz was a Seventh-day Adventist.

Z. SWEARINGEN AND SON.

Mr. Swearingen, a member of the Seventh-day Adventist church, had moved from Michigan to Arkansas in 1879, and settled on a small farm eleven miles south of Bentonville, the county seat of Benton county. He and his son Franz, seventeen years old, were indicted in April, 1886, upon the charge of Sabbath-breaking, the charge being that of hauling rails on Sunday, February 14, 1885.[1] Mr. J. W. Walker, attorney for the defendants, explained to the jury that the defendants conscientiously observed the seventh day of the week as the Sabbath, in accordance with the faith and practice of the church of which they were members. They were, nevertheless, assessed fines and costs amounting to $34.20. Not having the money with which to pay these, they were sent to jail October 1, 1886, until the money should be secured. October 13, the sheriff levied on and took possession of a horse belonging to Mr. Swearingen. October 25, the horse was sold at sheriff's sale for $26.50, leaving a balance against Mr. Swearingen of $7.70, yet both he and his son were released the same day the horse was sold. December 15, the sheriff appeared again on the premises of Mr. Swearingen, presenting a bill for $28.95, $21.25 of which, he said, was for the board of Mr. Swearingen and his son while in jail, and $7.70 the balance due on fine.

Property sacrificed for hauling rails on Sunday.

Board in prison charged.

[1] Seventeen days before the exemption clause was repealed. See page 654.

Mr. Swearingen had no money to pay the bill. The sheriff thereupon levied upon his horse, harness, wagon, a cow, and a calf. Before the day of the sale, however, Mr. Swearingen's friends raised the money by donations, paid the bill, and secured the release of his property.

I. L. BENSON.

Mr. Benson was not at the time of his alleged offense a member of any church, made no pretensions of religious faith, and did not observe any day. He had a contract for painting the railroad bridge across the Arkansas River at Van Buren, Arkansas. He worked a set of hands on the bridge all days of the week, Sundays included. In May, 1886, Mr. Benson and one of his men were arrested on the charge of Sabbath-breaking. They were taken to Fort Smith, and arraigned before a justice of the peace. The justice did not put them through any form of trial, nor even ask them whether they were guilty or not guilty, but read a section of the law to them, and told them he would make the fine as light as possible, amounting, with costs, to only $4.75 each. They refused to pay the fines, and were placed in custody of the sheriff. The sheriff gave them the freedom of the place, only requiring them to appear at the justice's office at a certain hour. Mr. Benson telegraphed to his attorney to attend to the cases.

Prosecution of non-Sabbatarians.

Light fine.

Mr. Benson and his men appeared before the justice for a hearing. It was granted, with some reluctance. The attorney, Mr. Bryolair, told the justice it was a shame to arrest men for working on the bridge at the risk of their lives to support their families, when the public work in their own town was principally done on Sunday. The trial was set for the next day. The accused were not placed under any bonds, but were allowed to go on their own recognizance. The following day a jury was impaneled, and the trial begun. The deputy sheriff was the leading witness, and swore positively that he saw the men at work on Sunday. The jury brought in a verdict to the effect that they had "agreed to disagree." This was on Wednesday. The following Monday was set for a new trial. No bonds were required. The defendants appeared at the time appointed, and pleaded not guilty. The justice, after giving them a brief lecture, dismissed the case.

Bonds not required.

Case dismissed.

Later Mr. Benson became a Seventh-day Adventist. He doubtless would not have fared so well had he been of this faith when arrested, as the prosecution against members of this church clearly indicated.

SAVORS OF RELIGIOUS PERSECUTION.

Commenting on this Sunday-enforcement crusade in Arkansas, and the character of the people being prosecuted, an article in the St. Louis "Globe-Democrat," of November 30, 1885, said:

"They have been from the first apparently an industrious and God-

Character of Adventists.

fearing people, the chief difference between them and other Christian bodies being that they observe the seventh day as the Sabbath, according to the commandment. But it seems that sectionalism cannot lay down its arms even when the sacred precincts of religion are entered, so *among the first things performed by the Legislature* at its session last winter, *less than a year* after these people had come into the State, *was the repeal of the clause which gave them the liberty to keep the day of their choice. . . .* It is a little singular that *no one else has been troubled on account of the law,* with perhaps one minor exception, *while members of the above denomination are being arrested over the whole State. It savors just a trifle of the religious persecution which characterized the dark ages.*" [1]

Repeal of exemption clause.

Adventists alone prosecuted.

SPEECH OF PATRICK HENRY.

Baptists persecuted in Virginia.

Similar prosecutions to the foregoing occurred in Virginia in its early history. From 1768 to 1775 Baptists were frequently arrested on the charge of "disturbing the peace." Jefferson, Madison, and Henry were all radically opposed to any interference in matters of religion, and were zealous supporters of the rights of conscience. So in this case Mr. Henry came fifty miles to defend some Baptist ministers who had been arrested. The only difference in the two cases is that those ministers were arrested for preaching the gospel as they believed the Bible commanded them, and Rev. Scoles was arrested for keeping the commandments of God, as he believed the Bible commanded him.

In relating the case, the historian says:

Henry's entrance into court.

"He [Mr. Henry] entered the court-house while the prosecuting attorney was reading the indictment. He was a stranger to most of the spectators; and being dressed in the country manner, his entrance excited no remark. When the prosecutor had finished his brief opening, the new-comer took the indictment, and glancing at it with an expression of puzzled incredulity, began to speak in the tone of a man who has just heard something too astounding for belief:

His speech.

"'May it please your Worships, I think I heard read by the prosecutor, as I entered the house, the paper I now hold in my hand. If I have rightly understood, the king's attorney has framed an indictment for the purpose of arraigning and punishing by imprisonment these three inoffensive persons before the bar of this court for a crime of great magnitude,— as disturbers of the peace.[2] May it please the court,

[1] The Supreme Court of the State confirmed the decision of the lower court, and in this case, as in the case of Shover *v.* the State, *ante* page 414 *et seq.*, the Sunday law was held to be constitutional. The decision, however, was not written out.

Similarity of present and past persecutions.

[2] There are some striking similarities in the indictments of the Baptists in the eighteenth century and those of the Sabbatarians now. Baptists were arrested for "disturbing the peace;" Sabbatarians are now arrested because they "perform labor . . . against the peace and dignity of the State." Judging from present appearances, "dis-

what did I hear read? Did I hear it distinctly, or was it a mistake of my own? Did I hear an expression as of crime, that these men, whom your Worships are about to try for misdemeanor, are charged with — with — with what?'

Henry's exclamations.

turbing the peace" will prove as convenient (though on account of the penalties being so much less severe, will not prove as effectual) a charge on which to arrest persons whose opinions are troublesome, as the charge of "treason" formerly did in England.

In the proposed Blair Sunday bill, and in many of the State Sunday laws, provision is made for the exemption of "conscientious" Sabbatarians from the penalties of the law for labor upon Sunday, "provided such labor be not done to the disturbance of others." The worthlessness of any such provision as this, however, is manifest; for some people are "disturbed" even when they hear of a Sabbatarian working upon the day which they regard as holy, though such person be plowing or hoeing,— and that, too, miles away from any place of meeting. The unreasonableness and injustice of any such provision, even in purely civil matters, was illustrated in San Francisco a few years ago; and in a religious question like that of Sabbath observance the evil would be increased a hundredfold.

An unreasonable provision.

In 1887 the city of San Francisco had an ordinance reading as follows:

"No person shall in any place indulge in conduct having a tendency to annoy persons passing or being upon the public highway, or upon adjacent premises."

A similar ordinance.

Under that ordinance one Ferdinand Pape was arrested for "annoying" some one by distributing circulars on the street. He applied to the Superior Court for a writ of *habeas corpus*, claiming that the offense charged against him did not constitute a crime, and that the ordinance making such action an offense was invalid and void, because it was unreasonable and uncertain. The case is reported as follows:

An arrest made.

"The writ was made returnable before Judge Sullivan, and argued by Henry Hutton in behalf of the imprisoned offender. Disposing of the question, the Judge gave quite a lengthy written opinion, in which he passed a somewhat severe criticism upon the absurdity of the contested ordinance, and discharged Pape from custody. Said the Judge:

Decision of Superior Court.

"'If the order be law, enforceable by fine and imprisonment, it is a crime to indulge in any conduct, however innocent and harmless in itself, and however unconsciously done, which has a tendency to annoy other persons. The rival tradesman who passes one's store with an observant eye as to the volume of business, is guilty of a crime, because the very thought of rivalry and reduction of business has a tendency to annoy. The passing of the most lenient creditor has a tendency to annoy, because it is a reminder of obligations unfulfilled. The passing of a well-clad, industrious citizen, bearing about him the evidences of thrift, has a tendency to annoy the vagabond, whose laziness reduces him to a condition of poverty and discontent. The importunities of the newsboy who endeavors with such persistent energy to dispose of his stock, has a tendency to annoy the prominent citizen who has already read the papers, or who expects to find them at his door as he reaches home. He who has been foiled in an attempted wrong upon the person or property of another, finds a tendency to annoy in the very passing presence of the person whose honesty or ingenuity has circumvented him. And so instances might be multiplied indefinitely in which the most harmless and inoffensive conduct has a tendency to annoy others. If the language of the ordinance defines a criminal offense, it sets a very severe penalty of liberty and property upon conduct lacking in the essential element of criminality.

Unjust consequences of such laws.

Ease with which some people are disturbed.

"'But it may be said that courts and juries will not use the instrumentality of this language to set the seal of condemnation on unoffending citizens, and to unjustly deprive them of their liberty and brand them as criminals. The law countenances no such dangerous doctrine, countenances no principle so subversive of liberty, as that the life or liberty of a subject should be made to depend upon the whim or caprice of judge or jury, by exercising a discretion in determining that certain conduct does or does not come within the inhibition of a criminal action. The law should be engraved so plainly and distinctly on the legislative tables that it can be discerned alike by all

A dangerous doctrine.

Mr. Henry's delivery.

"Having delivered these words in a halting, broken manner, as if his mind was staggering under the weight of a monstrous idea, he lowered his tone to the deepest bass; and assuming the profoundest solemnity of manner, answered his own question:

"'*Preaching the gospel of the Son of God!*'

"Then he paused. Every eye was riveted upon him, and every mind intent; for all this was executed as a Kean or a Siddons would have performed it on the stage,—eye, voice, attitude, gesture, all in accord to produce the utmost possibility of effect. Amid a silence that could be felt, he waved the indictment three times round his head, as though still amazed, still unable to comprehend the charge. Then he raised his hands and eyes to heaven, and in a tone of pathetic energy wholly indescribable, exclaimed,

"'Great God!'

"At this point, such was his power of delivery, the audience relieved their feelings by a burst of sighs and tears. The orator continued:

Religion and the state about to be dissevered.

"'May it please your Worships, in a day like this, when Truth is about to burst her fetters; when mankind are about to be aroused to claim their natural and inalienable rights; when the yoke of oppression that has reached the wilderness of America, and the unnatural alliance of ecclesiastical and civil power is about to be dissevered,—at *such* a period, when Liberty, Liberty of Conscience, is about to wake from her slumberings, and inquire into the reason of such charges as I find exhibited here to-day in this indictment'—

"Here occurred another of his appalling pauses, during which he cast piercing looks at the judges and at the three clergymen arraigned. Then resuming, he thrilled every hearer by his favorite device of repetition.

"'If I am not deceived,—according to the contents of the paper I now hold in my hand,—these men are accused of *preaching the gospel of the Son of God!*'

"He waved the document three times around his head, as though still lost in wonder; and then with the same electric attitude of appeal to heaven, he gasped,

"'Great God!'

"This was followed by another burst of feeling from the spectators; and again this master of effect plunged into the tide of his discourse:

"'May it please your Worships, there are periods in the history of man when corruption and depravity have so long debased the human

A tyrannical provision.

subjects of the commonwealth, whether judge upon the bench, juror in the box, or prisoner at the bar. Any condition of the law which allows the test of criminality to depend on the whim or caprice of judge or juror, savors of tyranny. The language employed is broad enough to cover conduct which is clearly within the constitutional rights of the citizen. It designates no border-line which divides the criminal from the non-criminal conduct. Its terms are too vague and uncertain to lay down a rule of conduct. In my judgment, the portion of the ordinance here involved is uncertain and unreasonable.'"

character, that man sinks under the weight of the oppressor's hand,— becomes his servile, his abject slave. He licks the hand that smites him. He bows in passive obedience to the mandates of the despot; and in this state of servility, he receives his fetters of perpetual bondage. But may it please your Worships, such a day has passed. From that period when our fathers left the land of their nativity for these American wilds,—from the moment they placed their feet upon the American continent,—from that moment despotism was crushed, the fetters of darkness were broken, and Heaven decreed that man should be free,—free to worship God according to the Bible. In vain were all their offerings and bloodshed to subjugate this new world, if we, their offspring, must still be oppressed and persecuted. But, may it please your Worships, permit me to inquire once more, For what are these men about to be tried? This paper says, *for preaching the gospel of the Saviour to Adam's fallen race!*'

Days of abject obedience past.

Americans destined to be free.

"Again he paused. For the third time, he slowly waved the indictment round his head; and then turning to the judges, looking them full in the face, exclaimed with the most impressive effect,

"'What laws have they violated?'

"The whole assembly were now painfully moved and excited. The presiding judge ended the scene by saying,

"'Sheriff, discharge these men.'

"It was a triumph of the dramatic art. The men were discharged; but not the less in other counties, did zealous bigots pursue and persecute the ministers of other denominations than their own. It was not till the Revolutionary War absorbed all minds, that Baptists ceased to be imprisoned."[1]

Mr. Henry's triumph.

[1] Parton's "Life of Thomas Jefferson," page 204 *et seq.* It is, indeed, a fact to be deplored that, even in free America, the state cannot be contented with confining its punishment to the criminal classes, but must enact and enforce laws against some of the most respectable and worthy citizens of the land. After all the examples we have had of the prosecution of noble men like Roger Williams and other Baptists, of the Quakers, Unitarians, and infidels, how can Americans again allow the revival of persecution on account of belief? Is the land so cleared of criminals that its jails would be lying idle unless they can be filled with Christians? or are the jails intended as altars from which prayers shall daily ascend to God for the prosperity of the nation and the welfare of its inhabitants? It is a day that should make Americans blush for shame when the most enlightened nation on earth locks Christians in the dirty cells of its jails simply because they obey the words of the Bible as they understand them, and just as they are read from the pulpit of every Christian church in the land!

A lesson hard to learn

As the historian says, "It was not till the Revolutionary War absorbed all minds, that Baptists ceased to be persecuted." And it is only when the spirit of the Revolution — the spirit of American freedom — is effaced from our minds, that we will again begin to persecute. As was declared by the report of the House of Representatives, eighty years ago, "It is, perhaps, fortunate for our country that the proposition [for Sunday legislation in 1829–30] should have been made at this early period while the spirit of the Revolution yet exists in full vigor." And it was; for the Sunday movement received a set-back from which it has not even yet recovered. But the Sunday advocates seem to think that the spirit of the Revolution has now been effaced sufficiently so that Sunday laws can be enacted and enforced with impunity.

Spirit of the Revolution.

REPORT OF THE BAR ASSOCIATION OF THE STATE OF ARKANSAS.

SUNDAY LAWS.

Exemption clause in Arkansas.

. "Our statute as it stands in 'Mansfield's Digest,' provides that 'persons who are members of any religious society who observe as Sabbath any other day of the week than the Christian Sabbath, or Sunday, shall not be subject to the penalties of this act (the Sunday law), so that they observe one day in seven, agreeably to the faith and practice of their church or society.' 'Mansfield's Digest,' section 1886.

Its repeal.

"This statute had been in force from the time of the organization of the State government; but it was unfortunately repealed by act of March 3, 1885. Acts, 1885, page 37.

"While the Jews adhere, of course, to the letter of the original command to remember the seventh day of the week, there is also in the State a small but respectable body of Christians who consistently believe that the seventh day is the proper day to be kept sacred; and in the case of Scoles *v.* State, our Supreme Court was compelled to affirm a judgment against a member of one of these churches, for worshiping God according to the dictates of his own conscience, supported, as he supposed, by good theological arguments. It is very evident that the system now in force, savoring as it does very much of religious persecution, is a relic of the middle ages, when it was thought that men could be made orthodox by an act of Parliament. Even in Massachusetts, where Sabbatarian laws have always been enforced with unusual vigor, exceptions are made in favor of persons who religiously observe any other day in the place of Sunday. We think that the law as it stood in 'Mansfield's Digest,' should be restored, with such an amendment as would prevent the sale of spirits on Sunday, as that was probably the object of repealing the above section."

A system of religious persecution.

Restoration of exemption clause recommended.

OPEN LETTERS.

The following statements of some of the foremost lawyers and other prominent citizens of Arkansas, relative to the operation of the Sunday law of that State, were received by Mr. D. T. Jones:

BAR OF THE WHOLE STATE SHOCKED.

The first is from Judge Williams of Little Rock, formerly a judge of the Supreme Court of the State of Arkansas:

"LITTLE ROCK, ARKANSAS, March 21, 1887.

"REV. DAN. T. JONES:

"SIR: As requested, I give you a short *résumé* of the history of our Sabbath law of 1885. Up to the time of the meeting of the Legislature in January, 1885, our Sunday law had always excepted from it sanctions

the cases wherein persons from conscience kept the seventh day as the Sabbath. It had been the case for many years at the capital, that no Sabbath laws were observed by the saloon-keepers. After the election of 1884, the newly-elected prosecuting attorney of that district, commenced a rigid enforcement of the law. A few Jewish saloon-keepers successfully defied it during the session of the Legislature. This led to the total and unqualified repeal of the conscience proviso for the seventh day in the old law. This was used oppressively upon the seventh-day Sabbath Christians, to an extent that shocked the bar of the whole State. A test case was brought from Washington county. Our Supreme Court could not see its way clear to hold the law unconstitutional, but the judges, as men and lawyers, abhorred it. Judge B. B. Battle, one of the three judges, was, with Judge Rose and myself, a member of the standing Committee on Law Reform of our State Bar Association. In our report, as you see, we recommended a change, which the Association adopted unanimously, Chief Justice Cockrill and Associate Justices Smith and Battle being members present and voting. At the meeting of the General Assembly the next week (January, 1887), Senator Crockett introduced a bill repealing the obnoxious law, in so far as it affected those who keep holy the seventh day, still forbidding the opening of saloons on Sunday.[1] Truly yours,

"SAM W. WILLIAMS."

Sabbatarians always had been exempted.

Sabbatarians oppressed.

Members of Committee on Law Reform.

Senator Crockett's bill.

LAW OPPRESSIVE ON SABBATARIANS.

The next is from Judge Rose of Little Rock, a prominent lawyer, and one of the Committee on Law Reform of the State Bar Association:

"LITTLE ROCK, ARKANSAS, April 15, 1887.

"REV. DAN. T. JONES,

"SPRINGDALE, ARKANSAS:

"DEAR SIR: Yours received. The law passed in this State in 1885, and which has since been repealed, requiring all persons to keep Sunday as a day of rest, although they might religiously keep some other day of the week, was enacted, I think, to meet the case of certain Jews in this city who kept saloons and other business houses open on Sunday. It was said that those persons only made a pretense of keeping Saturday as a day of rest.[2] Whether these statements were true or not, I do not know. The act of 1885 was found to work oppressively on persons believing as you do that Saturday is the Christian as well as the Jewish Sabbath; and hence its repeal. It was manifestly unjust to them as well as to Jews who are sincere in their faith.

"You ask me to express my opinion as to the propriety of such legislation as that contained in the repealed act. Nothing can exceed my

All compelled to keep Sunday.

Alleged reason.

Sabbatarians oppressed.

[1] For Senator Crockett's speech on the adoption of this bill, see *ante* page 354 *et seq.*

[2] This was the plea made in the Legislature to get the exemption repealed; but it was a peculiarly significant fact that while Sabbatarians were prosecuted in various parts of the State, *not a single saloon-keeper was prosecuted during the whole two years.*

Abhorrence for religious legislation.

abhorrence for any kind of legislation that has for its object the restraint of any class of men in the exercise of their own religious opinions. It is the fundamental basis of our government that every man shall be allowed to worship God according to the dictates of his own conscience. It was certainly not a little singular that while in our churches the command was regularly read at stated times, requiring all men to keep the Sabbath, which, amongst the Jews to whom the command was addressed, was the seventh day of the week, men should be prosecuted and convicted in the courts for doing so. As to the theological aspect of the matter, I am not competent to speak; but as a civil requirement, my opinion is that any legislation that attempts to control the consciences of men as to the discharge of religious duty, can only be the result of that ignorance and fanaticism which for centuries proved to be the worst curse that ever afflicted humanity.

Consistency manifested!

Religious legislation the result of ignorance and fanaticism.

"Very respectfully yours,

"U. M. Rose."

NATURE OF THE SUNDAY PROSECUTION.

Mr. E. Stinson, a public school teacher in Hot Spring county, writes concerning the nature of the Sunday prosecutions as follows:

"Malcolm, Hot Spring County, Arkansas,
March 27, 1887.

"Mr. Jones:

"Dear Sir: In answer to your inquiry, will say that since the repeal of the exemption clause in our statutes, which allowed persons who kept another day than Sunday as Sabbath, to go about their ordinary work or business on that day, several indictments have been found in Hot Spring county. In each and every case the parties so indicted have been conscientious observers of the seventh day, so far as I know them. To my knowledge others have worked on Sunday who did not observe the seventh day, and no bills were found against them. I believe the prosecutions to be more for religious persecution than for the purpose of guarding the Sunday from desecration. The men who have been indicted are all good moral men and law-abiding citizens, to the best of my knowledge. The indictments, to the best of my belief, were malicious in their character, and without provocation. I believe the unmodified Sunday law to be unjust in its nature, and that it makes an unjust discrimination against a small but worthy class of our citizens. I am a member of the Baptist Church, and not an observer of the seventh day; but I accept with gratitude the recent change in the laws of our State, which shows more respect for the conscientious convictions of all our citizens. I do not believe that if the same acts for which the indictments were lodged against Seventh-day Adventists, had been committed by those who did not keep the seventh day, any notice would have been taken of them. Respectfully,

Sabbatarians alone indicted.

Religious persecution intended.

Injustice of Sunday law.

Other Sunday desecrators unmolested.

"E. Stinson."

PERSECUTION AND RELIGIOUS INTOLERANCE MANIFESTED.

The physician and the proprietor of the Potash Sulphur Springs Hotel, a health resort near Hot Springs, both old residents of the place, were personally acquainted with some of those convicted of Sabbath-breaking in Hot Spring county, and write as follows:

"POTASH SULPHUR SPRINGS, ARKANSAS, March, 1887.

"TO WHOM IT MAY CONCERN: We, the undersigned, herewith testify that the recent prosecutions against the observers of the seventh-day Sabbath in our vicinity, have brought to the surface a religious intolerance and a spirit of persecution, the existence whereof a great many imagine not to exist any more in our time. Intolerance manifested toward Sabbatarians.

"J. T. FAIRCHILD, M. D.
"E. E. WOODCOCK."

SABBATARIANS ALONE INDICTED.

Another letter, from Mr. Fitzhugh, a justice of the peace, and acting deputy-sheriff in Hot Spring county during the two years in which the unmodified Sunday law was in force, will show the estimate as citizens and neighbors, placed upon some who were indicted for Sabbath-breaking.

"STATE OF ARKANSAS, COUNTY OF HOT SPRING, }
SALIM TOWNSHIP, April 9, 1887. }

"On the second day of March, 1885, the Legislature of Arkansas repealed the law allowing any person to observe as the Sabbath any day of the week that they preferred, and compelled them to keep the Christian Sabbath, or first day of the week. The effect of this change worked a hardship on a class of citizens in this county, known as Seventh-day Adventists, who observe the seventh instead of the first day of the week, as the Lord's Sabbath. There were five or six of them indicted (and some of them the second time) by the grand jury of this county, for the violation of this law.[1] In fact, these people were the only ones that were indicted for Sabbath-breaking, during the two years in which this law was in force. I was not intimately acquainted with but one of these people, Mr. John Shockey, who moved from Ohio, and settled within one and one-fourth miles of me, some two and a half years ago. I know nothing in the character of this gentleman but what would recommend him to the world at large. As a citizen, he recognizes and regards the laws of our country (with the above exception); as a neighbor, he might well be called a Samaritan; as a Christian, he is strict to his profession, and proves his faith by his works. Hardship on Sabbatarians. No others indicted. Character of Sabbatarians.

"Respectfully,
"BENJ. C. FITZHUGH, Justice of the Peace.
"Malvern, Hot Spring county, Arkansas."

[1] In Arkansas there were over twenty cases of the prosecution of Sabbatarians.

THE EXEMPTION RESTORED.

Senator Crockett introduces bill for restoration.

In January, 1887, a bill was introduced in the Arkansas Legislature by Senator R. M. Crockett, for the restoration of the clause in the State Sunday law exempting observers of the seventh day. The bill passed, and the exemption was restored. But two men voted against the measure in the Senate, both of these being preachers. One of them, a member from Pike county, was acquainted with many who observed the seventh day, several of whom were at that time under bonds. In private conversation, he confessed that they were all excellent people, and, in general, law-abiding citizens. For Mr. Crockett's speech in support of the measure, see page 354.

TENNESSEE.

Section 3 of article 6 of the Constitution of Tennessee says:

"That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can, of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given by law to any religious establishment or mode of worship."

Sabbath enforcement law in contravention of constitutional guarantee.

In contravention of this plain declaration of rights in the Constitution, the Sunday law of this State forbids "any merchant, artificer, tradesman, farmer, or other person . . . doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his children or servants, acts of real necessity or charity excepted, on Sunday." It also provides that "any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties as those who work on the Sabbath."

Sunday law revived when Sabbatarians appear.

From its enactment this law remained practically a dead letter until about the year 1885, when a number of citizens of Henry county becoming convinced that the seventh day is the Sabbath, a small church of Seventh-day Adventists was organized in the community. This appears to have led to the resurrection of the Tennessee Sunday law, which makes no exemption in favor of those who conscientiously observe another day, and a number of members of the church referred to were prosecuted under it.

W. H. PARKER.

Mr. Parker, of Springville, Tennessee, a man thirty-six years of age, and a member of the Seventh-day Adventist church, was arrested and tried September 29, 1885, on the charge of maintaining a nuis-

ance by working on Sunday. He was convicted, and fined twenty-five dollars and costs. His case was appealed to the Supreme Court of the State, and, notwithstanding the fact that the statute against Sunday labor in Tennessee does not make such labor an indictable offense, but subjects the offender to a fine of only three dollars, recoverable before a justice of the peace, it was decided that "a succession of such acts becomes a nuisance, and is indictable." The decision of the lower court was affirmed, the total fine and costs now amounting to $69.81. This Mr. Parker refused to pay, and was consequently required to serve out the amount in jail, at twenty-five cents per day. Taken from his wife, who at the time was in a delicate condition, and from a child who was under the doctor's care, he was committed to jail, where he contracted malarial fever. Previous to this time he had been in reasonably good health. On account of his sickness he was released, after being in jail fifty-nine days, upon giving bonds to return when he got well. In two months he returned, and worked out the balance of his sentence, amounting in all to two hundred eighty days, or to over nine months. He died September 18, 1890.

A new ruling.

Contracts malarial fever in jail.

JAMES STEM AND WILLIAM DORTCH.

James Stem and William Dortch were arrested, tried, and convicted for Sunday work at the same time as Mr. Parker. Mr. Stem was fifty-six years old, and Mr. Dortch sixty-four, when they were confined in jail, together with Mr. Parker. Mr. Dortch had a wife, a daughter, and a son to support, and Mr. Stem, a wife, a daughter, and an invalid son. The fines imposed were first placed at ten dollars, while Mr. Parker's was twenty dollars; but when the Supreme Court sustained the decision of the lower court, it placed the fine of each at twenty dollars. Refusing to pay their fines, these men were sent to jail, where they remained about sixty days.

Sixty days in jail.

W. S. LOWRY, J. MOON, J. H. DORTCH, AND JAMES STEM.

These four men, all members of the Seventh-day Adventist church at Springville, were tried at Paris, Tennessee, May 27, 1892, before Judge Swiggart, on the charge of doing work on Sunday. Six witnesses were introduced by the prosecution, each of whom testified that he was not disturbed by the labor performed on Sunday by the defendants. The testimony proved that Mr. Lowry had been seen at one time cutting firewood, and at another, loading wood on a wagon, on Sunday; that Mr. Moon had been cutting sprouts in his field on Sunday; that Mr. Dortch had been seen plowing in a strawberry field on Sunday, and that Mr. Stem had followed his ordinary and common vocation on Sunday, no definite work on any definite Sunday being proved against him. This was the second time Mr. Stem was placed behind the prison bars for conscience' sake. For the

No one disturbed.

most part, their fields were not along any public road, and consequently work in them could not easily be seen.

None of the accused employed counsel, but simply made a short statement of his position, and submitted his case to the jury. As an illustration of these, the following statement made by Mr. Lowry is here given:

Mr. Lowry's statement before jury.

"I would like to say to the jury that, as has been stated, I am a Seventh-day Adventist. I observe the seventh day of the week as the Sabbath. I read my Bible, and my convictions on the Bible are that the seventh day of the week is the Sabbath, which comes on Saturday. I observe that day the best I know how. Then I claim the God-given right to six days of labor. I have a wife and four children, and it takes my labor six days to make a living. I go about my work quietly, do not make any unnecessary noise, but do my work as quietly as possible. It has been proved by the testimony of Mr. Fitch and Mr. Cox, who live around me, that they were not disturbed. Here I am before the court to answer for this right that I claim as a Christian. I am a law-abiding citizen, believing that we should obey the laws of the State; but whenever they conflict with my religious convictions and the Bible, I stand and choose to serve the law of my God rather than the laws of the State. I do not desire to cast any reflections upon the State, nor the officers and authorities executing the law. I leave the case with you."

Twenty-five cents a day while in jail.

The defendants were convicted, the fine and costs assessed amounting to about twenty-five dollars in each case. Refusing to pay these, the four men were lodged in jail, June 3, to work out their fines at twenty-five cents a day. They were imprisoned from forty-five to fifty-three days each. The sheriff, Mr. Blackmore, a kind-hearted man, was loath to take them to jail, and remarked to the judge that the convicted were conscientious in the matter, to which the judge replied, "Let them educate their consciences by the laws of Tennessee." This statement seemed strangely out of harmony with the Constitution of Tennessee, which declares that "no human authority can in any case whatever control or interfere with the rights of conscience," and that "no preference shall ever be given by law to any religious establishment or mode of worship."

A matter of "conscience."

Put in chain-gang.

Not satisfied with this punishment, the prosecution, after a diligent search among obsolete statutes and decisions, finally arrived at the conclusion that the county jail was the county workhouse, and consequently, on the morning of July 18, three of these men were marched through the streets of Paris, in company with criminals of the chain-gang, and compelled to labor at shoveling on the streets. The chain-gang was composed of three honest, sober, industrious Christian farmers, whose only crime was that of doing farm labor on the first day of the week, and three men who had been convicted of drunkenness, discharging of firearms on the streets, fighting, and shooting at the city marshal.

WHOLESALE PROSECUTIONS ATTEMPTED.

Persecuting character of prosecutions apparent.

Following the prosecution and imprisonment of the four men named in the preceding account, an attempt was made to prosecute every male member of the Seventh-day Adventist church at Springville, a large number being indicted, which plainly revealed the persecuting character of the whole proceedings.

Free services of noted lawyer offered.

The facts coming to the knowledge of Mr. James T. Ringgold, of the Baltimore bar, that gentleman volunteered to defend the defendants free of charge, if they would accept his services. The kind offer was accepted. Mr. W. L. Carter, a local attorney, was associated with Mr. Ringgold, and Ex-Governor Porter brought in as volunteer counsel. Upon motion of these attorneys, all the indictments were quashed, the judge holding to some irregularity in their execution.

Indictments quashed.

W. B. CAPPS.

Supreme Court upholds prosecution.

June 26, 1894, W. B. Capps was locked up in the county jail at Dresden, Weakley county, Tennessee, for performing common labor on his farm on Sunday. At his trial, June 27, 1893, he was fined ten dollars and costs, amounting to $56.65. His case was appealed to the Supreme Court of Tennessee, which affirmed the judgment of the lower court, May 15, 1894, increasing the costs $15.60, making a total of $72.25, to be served out in jail at the paltry rate of twenty-five cents per day, entailing an imprisonment of 289 days, or over nine months.

Public aroused.

Mr. Capps had a wife and four children dependent upon him. Being a poor man, he was unable to support them during his confinement. Some of the newspapers of the country became interested in the case, and advocated raising money to pay Mr. Capps's fine. The "American Hebrew," of New York, went so far as to raise and send the necessary amount directly to the authorities, whereupon Mr. Capps was released, October 1, after an imprisonment of ninety-seven days.

DAVIS CRUZE.

Jury quickly acquitted.

Davis Cruze, a Seventh-day Adventist, living on Copper Ridge, near Byington, Tennessee, was arrested in May, 1909, for chopping wood on Sunday. At his trial it was shown that he had worked hard all the week as a farm hand, and that it was necessary for him to cut the wood to cook the dinner. The prosecuting witness, a neighbor living across the road, with some other friends, found fault with Mr. Cruze on account of his religion, and determined to make it hard for him. The judge charged the jury that because Cruze observed the seventh day, was no excuse for his violating the Sunday laws. This being his only offense, and the witness showing animus and prejudice against the accused, the jury, after a two minutes' deliberation, returned a verdict of acquittal, much to the relief of Mr. Cruze, as he was a poor man with a large family, and the costs, $75 perhaps, he would doubtless have had to pay at the rate of fifty cents a day in the chain-gang.

THE CELEBRATED KING CASE.

1889, 1890.

SUMMARY OF THE CIRCUMSTANCES CONNECTED WITH THE CASE OF THE STATE v. KING.[1]

Surprising facts.

That a man should be fined seventy-five dollars and costs for quietly working in his own field in the United States of America may indeed seem a strange story to relate. That he should twice be tried and subjected to fines or imprisonments for substantially the same offense, may appear stranger still; but such are facts.

Tennessee Sunday laws.

On the statutes of Tennessee is found a Sunday law which forbids "any merchant, artificer, tradesman, farmer, or other person . . . doing or exercising any of the common avocations of life, or of causing or permitting the same to be done by his children or servants, acts of real necessity or charity excepted, on Sunday." It also provides that "any person who shall hunt, fish, or play at any game of sport, or be drunk on Sunday, as aforesaid, shall be subject to the same proceedings and liable to the same penalties, as those who work on the Sabbath." Code of Tennessee, sections 2289, 2290. From the day of its enactment

The law a dead letter.

until recently, this law has been practically a dead letter. Men have been allowed to hunt, fish, shoot, drink, and labor on that day without interference. No one has complained of being disturbed. But of late certain citizens in the western part of the State, residents of Obion county, seem to have discovered the purpose for which this law was

Its revival.

made, and found occasion to set in motion this hitherto inoperative section of the code.

Cause of revival.

Within the past few years, some of their fellow-citizens becoming convinced that the seventh day is the Sabbath, a small church was organized in the community, whose members observe the seventh day, and believe it to be their privilege, according to the commandments of God, to labor on the other six days of the week. This appears to have

No exemption clause.

led to the discovery of the Tennessee Sunday law, which, unlike the Sunday laws of most other States, makes no exemption in favor of those who conscientiously observe another day.

Feelings toward Sabbatarians.

The presence of this new but small organization of Sabbatarians seems not to have been agreeable to certain citizens of other religious belief. They told Mr. King, a member of this new organization, that

His faith not to be tolerated.

if he wished to keep the seventh day, and do as he had done, he must move out of the country. He replied that this is a free country; that

[1] The case of the State *v.* King, brought before the Supreme Court of Tennessee, having attracted much attention and been commented upon by the press in all parts of the country, a brief history of it will be of interest. The account here inserted is written by Mr. W. A. Colcord, for some years secretary of the Religious Liberty Association of Washington, D. C., who carefully examined the case in detail.

a man is allowed here to worship God as he understands the Scriptures to teach. But they insisted that he must keep Sunday, and not teach their children by his example that the seventh day is the Sabbath; and if he did not comply with their wishes, he would be prosecuted. He cited them to the past history of the community, wherein Sunday had not been observed, and yet they had not prosecuted any one for its violation. Their answer indicated that all parties would be compelled to keep it from that time on, whether they kept any other day or not. He argued that if he conscientiously observed the day which he believed God required, they should not then compel him to keep a day in which he did not believe, as that would be tyrannical. He also stated to them that he was a poor man, and could not afford to lose one sixth of his time from the support of his family. But nothing short of submission would be accepted by them.

Claims of Mr. King.

Not being able to convince him that he was in error, nor to dissuade him from his course, they immediately set about to compass their ends by other means. The Sunday law of the State would accomplish their purpose. Accordingly, a league was formed for the enforcement of the law. The following is a copy of the pledge taken by this league when it was organized:

Formation of vigilance committee.

"NOTICE.

"TO WHOM IT MAY CONCERN: That the undersigned citizens of ——, being desirous of the welfare of our community, and that peace and harmony may prevail, and that the morals of ourselves and our children may not be insulted and trampled upon by a wilful violation of the Sunday laws of our land; do this day pledge our word and honor, that we will individually and collectively prosecute each and every violation of the Sunday law of our State that may come under our observation.

"December 10, 1888."

Pledge of the league.

Previous to this, the Sunday law had long been violated by the people of this neighborhood. Scores of men had made Sunday a day for hunting and fishing. And church members of different denominations, as well as non-professors, had made it a rule, if business was urgent, to do common labor upon that day. Now it would be supposed that after the organization of the league, all this would cease, or that every offender would be promptly complained of, and summoned to appear before the court. But what was the result? The Sunday gaming and shooting went on after the league was organized the same as before. Others besides those who keep the seventh day worked upon their farms on Sunday in a more public and noisy manner than those who observed the seventh day.[1] But not one word of complaint was made about it. When, however, Mr. King went out into his field one Sunday in June, quietly to cultivate his corn, which was so tall at the time as nearly to

Sunday observance previously.

Sunday work in general.

Sabbatarians alone complained of.

[1] This point has been prominent in connection with the prosecution of Sabbatarians in nearly every State where they have been arrested.

Mr. King's first arrest.

hide him from sight, he was promptly arrested, brought before Justice Barker, of Obion county, July 6, 1889, tried, and assessed fines and costs, amounting to twelve dollars and eighty-five cents.[1]

A significant episode.

Another episode occurred about this time which showed the real object of the attack. The seventh-day-keeping church desired a minister to visit them during their quarterly meeting, and hold some services with them. A company on the Kuklux plan was organized, and, armed with shot guns, rifles, and revolvers, went to the place of meeting one Sunday night, and fired into a congregation of men, women, and children. Some fifteen or twenty shots were fired, but as they had to shoot through the wall of the building, no one was hit, though one rifle ball passed exactly through the space behind the desk that had been occupied a moment before by the speaker.[2]

Kuklux proceedings.

Shooting into meeting.

Indictment of Adventists.

All this failing to accomplish the desired result, Mr. King and two of his brethren, Mr. Callicott and Mr. Stem, who lived across the line in Dyer county, soon learned that they had been complained of before the grand juries of their respective counties, and indictments found against them for laboring on Sunday. Their cases were to be tried in November. Mr. King's trial, which was to be held at Troy, Obion

[1] After judgment had been rendered against Mr. King for working on Sunday by the Supreme Court of the State, some facts transpired which threw considerable light upon the spirit actuating his prosecutors in his arrest. It seems that his most prominent prosecutor later proved to be a criminal himself. The report is as follows:

Character of Mr. King's principal prosecutor.

"One of the most prominent persons connected with the arrest and prosecution of R. M. King and other Sabbatarians in Dyer county, Tennessee, was the superintendent and teacher of the Bible class in the union Sunday-school. It was this man who rode around to the farther side of Mr. King's corn-field, and, when the gentleman whose religious views were so repugnant to the community, emerged from the tall corn at the end of the rows, said he would have to have him arrested, and asked if he did not think it was wrong to break the law of his country. This man who thus posed as religious instructor and guardian of the law, was later arrested for selling whisky at a public gathering, contrary to the laws of the State, the result of which was a hand-to-hand fight participated in by thirty intoxicated men, one of whom was seriously wounded. After his arrest, on pretext of desiring to speak a few moments with his sick wife, he was allowed to enter her room, from which he jumped through a window, and escaped." There were fifteen witnesses against him.

"None so blind as those who will not see."

[2] Even occurrences like this will not convince the obstinate minds of religio-political reformers that any such thing as religious persecution can happen in this age of the world. Probably nothing will convince them. But whenever we see society or members of society interfering illegitimately with the actions of others, it is time for all persons interested in the liberty and welfare of the nation to protest. As to the limits of the authority of society over the individual, John Stuart Mill says:

First principle of government.

"The maxims are, first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct."

Effects of its application.

It is the partial carrying out of this principle that has enabled truth to make such marked advancement in the latter part of the present millennium. And every departure from it, whether by the state or by communities is a retrogradation in civilization, and retards the advancement of truth. God created individuals free agents, and when men interfere with this freedom, they sin against both man and God.

county, was postponed until the spring term of court. The trial of the other two occurred at Dyersburg, Dyer county, November 25, 26, the two cases being tried as one. The jury brought in a verdict of guilty in one case, and disagreed in the other. Judge Flippin sent them back to try again, which only resulted in a like disagreement. The Judge then dismissed them, stating that the evidence would not sustain the verdict rendered in the case of the one they pronounced guilty, and granted a new trial.[1]

The trials.

[1]The second trial of Mr. L. A. Callicott came off at Dyersburg, Tennessee, July 21, 1890. During this trial the question arose as to the position of the Seventh-day Adventists in reference to paying religious homage to the Sabbath of the dominant cult by resting on the day which they regard as the foundation-stone of their belief. An Adventist minister was summoned, and the following evidence elicited:

Second trial of Mr. Callicott.

TESTIMONY OF REV. MR. MARVIN.

Examination of an Adventist minister.

COL. RICHARDSON: Mr. Marvin, where do you live?

MR. MARVIN: At Trezevant, Carroll county, Tennessee.

COL. RICHARDSON: Are you a minister of the Seventh-day Adventist Church?

MR. MARVIN: Yes, sir.

COL. RICHARDSON: What is the belief and practice of your church concerning the Sabbath?

Belief of Adventists.

MR. MARVIN: We believe the seventh day is the Sabbath of the Lord, as brought to view in Exodus, twentieth chapter, and keep it as such; and with James (second chapter, twelfth verse), we believe this to be a law of *liberty*, and that we have a heaven-born right to obey it in any State or nation.

COL. RICHARDSON: You regard it as a Christian duty to keep that day holy, and no other?

MR. MARVIN: Yes, sir.

COL. RICHARDSON: Does your church hold that the working upon six days is as imperative as the keeping of the seventh?

MR. MARVIN: No, sir.

CROSS-EXAMINATION.

ATTORNEY-GENERAL: Mr. Marvin, what is the position of your people as to working six days?

MR. MARVIN: They have never officially or publicly expressed any rule concerning it.

ATTORNEY-GENERAL: Do your people teach that it is a sin to rest on Sunday?

MR. MARVIN: We believe that when required to —

ATTORNEY-GENERAL: But answer my question.

MR. MARVIN: I will, sir, if you will give me opportunity.

ATTORNEY-GENERAL: Well, go on, then.

Views of Sunday rest.

MR. MARVIN: We believe that when *required* to rest on Sunday by laws based upon the religious aspect of the day, it would be wrong to obey them.

ATTORNEY-GENERAL: Do laws requiring men simply to *rest* tend to enforce religion or worship?

MR. MARVIN: Yes, sir, if such laws be *Sunday* laws.

ATTORNEY-GENERAL: On what grounds?

MR. MARVIN: On the grounds that there is not now, nor ever was, a Sunday law that did not have for its basis the religious character of the day.

ATTORNEY-GENERAL: But it would not interfere with *your* religion to rest on Sunday?

Sunday observance an act of worship.

MR. MARVIN: Yes, sir. Sunday-keeping is a religious act — an act of worship. It would be conforming to an opposing religion.

The minister was then excused, and the Attorney-General yielded the case, Judge Flippin charging the jury to bring in the verdict, "not guilty."

Mr. King's trial.

March 6, 1890, Mr. King's trial came up in court again at Troy, before Judge Swiggart, Attorney-General Bond appearing for the State, and Colonel Richardson for the defendant. The indictment against Mr. King was based on the following charges: "Plowing on Sunday, and doing various other kinds of work on that day [June 23] and on Sundays before that day without regard to said Sabbath-days." In this it was claimed that this was "a disturbance to the community in which done, was offensive to the moral sense of the public, and was and is a public nuisance."

His indictment.

Witnesses examined.

Six witnesses were examined: five for the prosecution — Robert Cole, W. W. Dobbins, Alex. Wright, Wm. Oaks, and J. T. Marshall; and one for the defense — Squire J. A. Barker. All testified to the good character of the defendant, Mr. King, as a quiet, peaceable, law-abiding citizen, with the one exception of working on Sunday. The defendant offered to show that he had been brought before Squire Barker, and fined for the principal offense charged in the indictment (working on June 23), and that he had paid his fine; but the court would not permit him to prove it. The examination of the witnesses showed that two of them, members of a popular church, belonged to the organization, the members of which had bound themselves together by a written agreement to prosecute every violation of the Sunday laws. Colonel Richardson then offered to prove that men in the same neighborhood where Mr. King lives had cut wheat with a self-binder, rafted logs, and done other work on Sunday, for which they had never been called in question; but the court would not admit the evidence.

Evidence not admitted.

The following testimony of the witnesses in this trial substantiates the above statements, and shows that the sole cause for the prosecution was a dislike on the part of certain witnesses to the religious views of the defendant:

TESTIMONY OF MR. COLE.

Mr. King's work.

ATTORNEY-GENERAL: Did you see Mr. King engaged in plowing or doing any kind of farm work in District No. 9, Obion county, about the fourth Sunday in June last?

MR. COLE: I did.

ATTORNEY-GENERAL: What sort of work was he doing, Mr. Cole?

MR. COLE: He was plowing in the field.

ATTORNEY-GENERAL: Plowing corn?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: That is part of his regular work, farming?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: That was his means of making a living?

MR. COLE: Yes, sir.

No feeling engendered.

ATTORNEY-GENERAL: That was on Sunday?

MR. COLE: Yes, sir.

ATTORNEY-GENERAL: Was there any disturbance or excitement of any kind produced by his working there, plowing there?

MR. COLE: Well, sir, it excited a good deal of comment, and gave offense to the sense of propriety of those who were on their way to the church. "Disturbance" produced.

ATTORNEY-GENERAL: Was there any feeling produced or engendered in the neighborhood by reason of that fact?

MR. COLE: No, sir; I cannot say that there was.

ATTORNEY-GENERAL: Only a determination on the part of some that he should be prosecuted for it?

MR. COLE: Yes, sir.

CROSS-EXAMINATION.

COL. RICHARDSON: Of what church are you a member?

MR. COLE: The Methodist Church.

COL. RICHARDSON: Had there been a combination or a written agreement entered into between you and the parties that you have named, and others, that you would prosecute all violations of the Sunday law? Mr. Cole a member of the league.

MR. COLE: Yes, sir; there had.

COL. RICHARDSON: Have you ever had anybody else indicted, or arrested, or charged except Seventh-day Adventists?

ATTORNEY-GENERAL: I object to that.

COL. RICHARDSON (to the court): I am asking it with a view to show the animus of these witnesses and their feelings against this particular man. I expect to show why Mr. Cole, as he said, had entered into a compact to prosecute all parties who violated the Sunday law. I expect to prove by Mr. Cole, or if not by him, by others, that divers parties who are not Seventh-day Adventists cut wheat, did all sorts of work on the Sabbath, desecrated it generally, and that no attempt has been made to prosecute or interfere with any one except this remnant of Israel. Object of cross-examination.

THE COURT: I sustain the Attorney-General's objection.

COL. RICHARDSON (to the witness): Did you see the defendant, Mr. King, working on Sunday?

MR. COLE: Yes, sir; I saw him plowing in his field on Sunday, the twenty-third day of June last.

COL. RICHARDSON: It did not disturb you any, did it?

MR. COLE: Yes, sir; of course it did; it was very annoying to my feelings.[1] "Annoyance" to feelings.

[1] John Stuart Mill presents this kind of intolerance in its true light. He says: Argument of Mr. Mills.

"There are many who consider as an injury to themselves any conduct which they have a distaste for, and resent it as an outrage to their feelings; as a religious bigot, when charged with disregarding the religious feelings of others, has been known to retort that they disregard his feelings, by persisting in their abominable worship or creed. But there is no parity between the feeling of a person for his own opinion, and the feeling of another who is offended at his holding it; no more than between the desire of a thief to take a purse, and the desire of the right owner to keep it. And a person's taste is as much his own peculiar concern as his opinion or his purse. . . . The evil here pointed out is not one which exists only in theory; and it may perhaps be expected that

Reason for his annoyance.

COL. RICHARDSON: On what account?

MR. COLE: Because I thought it a wilful and intentional slight to our community.

COL. RICHARDSON: On what grounds?

MR. COLE: On the ground that it was a violation of laws, both sacred and civil.

I should specify the instances in which the public of this age and country improperly invests its own preferences with the character of moral laws. I am not writing an essay on the aberrations of existing moral feeling. That is too weighty a subject to be discussed parenthetically, and by way of illustration. Yet examples are necessary, to show that the principle I maintain is of serious and practical moment, and that I am not endeavoring to erect a barrier against imaginary evils. And it is not difficult to show, by abundant instances, that to extend the bounds of what may be called moral police, until it encroaches on the most unquestionably legitimate liberty of the individual, is one of the most universal of all human propensities.

Illustration of illegitimate interferences with rights of individuals.

"As a first instance, consider the antipathies which men cherish on no better grounds than that persons whose religious opinions are different from theirs, do not practice their religious observances, especially their religious abstinences. To cite a rather trivial example, nothing in the creed or practice of Christians does more to envenom the hatred of Mahometans against them, than the fact of their eating pork. There are few acts which Christians and Europeans regard with more unaffected disgust, than Mussulmans regard this particular mode of satisfying hunger. It is, in the first place, an offense against their religion; but this circumstance by no means explains either the degree or the kind of their repugnance; for wine also is forbidden by their religion, and to partake of it is by all Mussulmans accounted wrong, but not disgusting. Their aversion to the flesh of the 'unclean beast' is, on the contrary, of that peculiar character, resembling an instinctive antipathy, which the idea of uncleanliness, when once it thoroughly sinks into the feelings, seems always to excite even in those whose personal habits are anything but scrupulously cleanly, and of which the sentiment of religious impurity, so intense in the Hindoos, is a remarkable example. Suppose now that in a people of whom the majority were Mussulmans, that majority should insist upon not permitting pork to be eaten within the limits of the country. This would be nothing new in Mahometan countries. Would it be a legitimate exercise of the moral authority of public opinion? and if not, why not? The practice is really revolting to such a public. They also sincerely think that it is forbidden and abhorred by the Deity. Neither could the prohibition be censured as religious persecution. It might be religious in its origin, but it would not be persecution for religion, since nobody's religion makes it a duty to eat pork. The only tenable ground of condemnation would be that with the personal tastes and self-regarding concerns of individuals the public has no business to interfere.

Another illustration.

"To come somewhat nearer home: the majority of Spaniards consider it a gross impiety, offensive in the highest degree to the Supreme Being, to worship him in any other manner than the Roman Catholic; and no other public worship is lawful on Spanish soil. The people of all Southern Europe look upon a married clergy as not only irreligious, but unchaste, indecent, gross, disgusting. What do Protestants think of these perfectly sincere feelings, and of the attempt to enforce them against non-Catholics? Yet if mankind are justified in interfering with each other's liberty in things which do not concern the interests of others, on what principle is it possible consistently to exclude these cases? or who can blame people for desiring to suppress what they regard as a scandal in the sight of God and man? No stronger case can be shown for prohibiting anything which is regarded as a personal immorality, than is made out for suppressing these practices in the eyes of those who regard them as impieties; and unless we are willing to adopt the logic of persecutors, and to say that we may persecute others because we are right, and that they must not persecute us because they are wrong, we must beware of admitting a principle of which we should resent as a gross injustice the application to ourselves."

COL. RICHARDSON: Then it was an excitement of your religious feelings, and repulsive to your views of Christianity? Religious views disregarded.

MR. COLE: Yes, sir.

COL. RICHARDSON: You regarded it as an insult purely because it was on the Sunday?

MR. COLE: Yes, sir.

COL. RICHARDSON: How long have you known Mr. King?

MR. COLE: For about twenty or twenty-five years.

COL. RICHARDSON: What was the general character of the defendant as a peaceable, quiet, law-abiding citizen, up to the time of this indictment? Character of Mr. King.

MR. COLE: It was good.

COL. RICHARDSON: Is he a pious, Christian gentleman?

ATTORNEY-GENERAL: I object to that question.

THE COURT: I sustain the objection. The question is not relevant. His religious views.

COL. RICHARDSON: Your Honor, I think it is relevant, and I submit to your Honor that I propose to prove that he is a member of a church which holds that Saturday, the seventh day, is the Sabbath, and that he observes it. I think I have a right to do this for two purposes: first, to show that he did not intentionally violate the law; second, to show the intent and purpose for which he did it, as a matter of mitigation. If this action can be sustained at all, and if this jury can find any verdict at all, it is within the discretion and power of the jury to impose any fine above fifty dollars that they may see proper. And I think that as a matter of mitigation I have a right to show to the jury that this man belongs to a church that professes certain tenets of religious faith, amongst which is that the seventh day is the Sabbath; and that he observes that day as the Sabbath. I think I have a right to prove this,—not, I grant you, as a defense to the action, or as a decision of it, but in mitigation of any fine.

THE COURT: I do not think his religious belief or religious connection with any church or sect has anything to do with this lawsuit, and sustain all objections tending to prove anything of that sort. Testimony overruled.

COL. RICHARDSON: And your Honor declines to allow me to prove it, even as a matter of mitigation?

THE COURT: Yes, sir.

COL. RICHARDSON (to the witness): Are you prejudiced against the defendant because of his religious views?

MR. COLE: I can say this, that I do not favor his religious views.

Here the court objected to any further questions on this point from the defense.

TESTIMONY OF MR. DOBBINS.

COL. RICHARDSON: How long have you known Mr. King?

MR. DOBBINS: I have known Mr. King for seven, eight, nine, or ten years—somewhere along there.

Mr King's reputation.

COL. RICHARDSON: Do you know what his reputation and standing are in that community since you have known him? How do the people regard him?

MR. DOBBINS: They regard him as a pretty clever sort of fellow.

COL. RICHARDSON: Stands well in the community there?

MR. DOBBINS: Yes, sir; I think he did.

COL. RICHARDSON: You had him arrested?

MR. DOBBINS: I do not deny that.

COL. RICHARDSON: Where did you have him carried?

MR. DOBBINS: Before Squire Barker.

COL. RICHARDSON: I propose, if your Honor please, to ask him if he did not belong to an association down there that had formed an agreement to prosecute all violations of the Sabbath.

THE COURT: He may answer that.

MR. DOBBINS: I signed an article of that kind, sir.

COL. RICHARDSON: Did you ever indict, or have arrested, or prosecute, any other man than this? (Answer — Never.)

ATTORNEY-GENERAL: I object to that.

COL. RICHARDSON: In order to show the spirit of this witness, I propose to ask him, if your Honor please, if he ever had any man arrested in accordance with their undertaking; whether he ever had anybody arrested except some persons belonging to this denomination to which this defendant belongs.

ATTORNEY-GENERAL: Hold on, Mr. Dobbins, I object to that.

THE COURT: I think the objection is well taken.

COL. RICHARDSON: I am not in the habit of having a controversy with the court. I always try to submit gracefully. But it strikes me like this, if your Honor please, that when I have shown that Mr. Cole, and Mr. Dobbins, and some others, though claiming to be law-abiding citizens, have formed a combination and entered into a solemn agreement to prosecute all violators of the Sunday law, but have prosecuted only those of a certain class, they have in this arrogated to themselves the position of guardians *par excellence*, of these Christian people, and they intend to suppress them. Now, he is the prosecutor in this case. He has had this identical man arrested, and carried before a justice of the peace about this identical matter. Now, it does strike me that it is legitimate to show his feeling toward this man in this trial. And I intend to show that other people have worked there — men of their religious views — in other pursuits, that they have worked there Sunday after Sunday, under his knowledge, and with the knowledge of this association to which he belongs; and that the men belonging to these Seventh-day Adventists are the only men that he has ever interrupted or called to account for violation of the Sabbath law. I think it is fair and legitimate evidence to go to the jury to show the motives that have prompted this prosecution. I submit to your Honor that I have a right to show it.

Spirit actuating prosecutors of Sabbatarians.

THE COURT: I do not think that what you propose to call out by the question put to the witness is competent matter.

Witnesses who worked on Sunday.

The cross-examination of the three following witnesses developed the fact that two of them were going to another part of the neighborhood after a cow, and the other was engaging harvest hands, when they saw Mr. King at work on Sunday. They seemed to think that it was perfectly legitimate for them to engage in secular work on Sunday, even in the most public manner, but if a Sabbatarian works quietly on his own premises, they are at once "shocked," as witness Wright stated he was.

TESTIMONY OF MR. WRIGHT.

COL. RICHARDSON: How long have you known this defendant?

MR. WRIGHT: I suppose I have known him some twelve or fifteen years.

Mr. King's reputation.

COL. RICHARDSON: Do you know his reputation and standing as a moral, upright, law-abiding citizen in that community before the finding of this indictment?

MR. WRIGHT: I have never heard anything great against Bob until this work.

COL. RICHARDSON: Was his reputation that of a peaceable, law-abiding, orderly man?

MR. WRIGHT: I believe it was, up to that time, sir; so far as I know, it was.

COL. RICHARDSON: When did you see him working first?

MR. WRIGHT: Well, as to the exact time, if you call for it, I have it right here (striking his breast).

COL. RICHARDSON: You have it written down?

MR. WRIGHT: Yes, sir.

COL. RICHARDSON: Pull it out, and let me see it.

MR. WRIGHT: I got it just there — got it May 12.

COL. RICHARDSON: When did you put that down there?

MR. WRIGHT: Something near the time of the occurrence.

COL. RICHARDSON: How came you to put it there?

People tire of Sunday work.

MR. WRIGHT: Because I supposed they were going to stop their working on Sunday.

COL. RICHARDSON: What made you suppose that?

MR. WRIGHT: Because the general community was tired of the work.

COL. RICHARDSON: Who was tired of it?

MR. WRIGHT: The general people.

COL. RICHARDSON: How do you know?

MR. WRIGHT: I heard them say so.

COL. RICHARDSON: Who did you hear say so?

MR. WRIGHT: Various ones.

COL. RICHARDSON: Name them.

MR. WRIGHT: Wright, Pardue —

COL. RICHARDSON: Which Wright?

MR. WRIGHT: Bill Wright.

Relation to witness Wright.

COL. RICHARDSON: What relation is he to you?

MR. WRIGHT: We are cousins.

COL. RICHARDSON: When did he leave there?

MR. WRIGHT: In January.

COL. RICHARDSON: He left in January, and was tired of plowing that was done in May!

MR. WRIGHT: He was tired of work, I suppose, that had been done before that time.

COL. RICHARDSON: How do you suppose that?

MR. WRIGHT: Well, I suppose he was.

COL. RICHARDSON: Why did you write that down in your book?

Intentions to prosecute.

MR. WRIGHT: I will tell you why I did it. The people in the general community were tired of the work that had been done before, and I was right there adjoining him, where I could see him, and I knew that I would be called to court, as I am, and I set it down.

COL. RICHARDSON: Now who was tired besides Mr. Wright?

MR. WRIGHT: I was, myself, and Mr. Cole, Dobbins, and Pardue.

COL. RICHARDSON: What did you say you saw him doing in May?

MR. WRIGHT: He was hoeing corn, I believe [reading from the book he had produced] — yes, he was hoeing corn.

COL. RICHARDSON: How long did you see him hoeing?

MR. WRIGHT: Well, I was passing —

COL. RICHARDSON: Where were you going?

MR. WRIGHT: I was passing down the road, and then I passed back up the road. I went down to my field.

COL. RICHARDSON: What were you doing down to your field?

MR. WRIGHT: I went down to see if my corn was coming up.

COL. RICHARDSON: When was the next time you saw any work done?

MR. WRIGHT: Nineteenth of May.

COL. RICHARDSON: About how long did you see him?

MR. WRIGHT: I do not know exactly; about five minutes, may be.

COL. RICHARDSON: When was the next time?

MR. WRIGHT: June 2.

COL. RICHARDSON: When did you write that down?

MR. WRIGHT: At the time when it was done.

COL. RICHARDSON: Wrote those all down the time it was done? keeping books?

MR. WRIGHT: Yes, sir; keeping books for my own convenience.

COL. RICHARDSON: Who else saw that besides you?

MR. WRIGHT: A man by the name of Oaks saw it.

COL. RICHARDSON: Where were you when you saw it?

MR. WRIGHT: We were riding down the road.

COL. RICHARDSON: What for?

MR. WRIGHT: I was going to my father-in-law's.

COL. RICHARDSON: What were you going there for?

MR. WRIGHT: I was going there to get a cow that belonged to me, sir.

COL. RICHARDSON: Drove the cow home that day? Mr. Dobbins's secular Sunday work.

MR. WRIGHT: I did, sir.

COL. RICHARDSON: Necessity, was it?

MR. WRIGHT: Yes, sir; it was a case of necessity.

COL. RICHARDSON: What was Mr. Oaks doing?

MR. WRIGHT: Helping me drive the cow.

COL. RICHARDSON: That is what you went for?

MR. WRIGHT: Yes, sir.

COL. RICHARDSON: How long did you see Mr. King harrowing?

MR. WRIGHT: No longer than I was just passing by.

COL. RICHARDSON: It did not take him as long as it took you to get the cow, did it?

MR. WRIGHT: I do not know whether it did or not.

COL. RICHARDSON: Well, that plowing and hoeing — that did not disturb you in any way, did not hurt you, damage you, or hinder you in any way, did it?

MR. WRIGHT: I did not consider that I was hurt by it. Witness not injured.

COL. RICHARDSON: It did not incommode you in any way, did it?

MR. WRIGHT: Not further than this: I did not want to raise my children up there where this work was going on.

COL. RICHARDSON: How did this work disturb you?

MR. WRIGHT: It disturbed me in this way: it was something that I was not used to; it sort of came up in this way, that it was so unexpected at the time, it shocked me. Feelings shocked, however.

COL. RICHARDSON: Shocked you?

MR. WRIGHT: Yes, sir.

COL. RICHARDSON: How long did the shock continue?

MR. WRIGHT: Not very long.

COL. RICHARDSON: Who else was shocked besides you?

MR. WRIGHT: I do not know of any one else.

COL. RICHARDSON: How many times did it shock you?

MR. WRIGHT: I acknowledge, sir, that it did not shock me but one time.

COL. RICHARDSON: Create any disturbance at the time? No disturbance created.

MR. WRIGHT: Not at the time, that I saw.

COL. RICHARDSON (to the court): Well, I propose, if your Honor please, to ask this man, too, what he knows about their working, cutting wheat, etc., there in that country on Sunday.

THE COURT: I will make the same ruling.

COL. RICHARDSON: So it will go on record if it becomes necessary?

THE COURT: Yes, sir.

TESTIMONY OF MR. OAKS.

COL. RICHARDSON: Who else saw Mr. King when you saw him?

MR. OAKS: Alex. Wright saw him at the time he was harrowing.

COL. RICHARDSON: Where were you going that day, Mr. Oaks?

MR. OAKS: I was going with Mr. Wright.

Work of witnesses.

COL. RICHARDSON: What was he going for?

MR. OAKS: He was going to look after a cow.

COL. RICHARDSON: Did you help drive the cow?

MR. OAKS: Yes, sir. He turned her out, and we followed along behind her.

COL. RICHARDSON: Did that disturb anybody?

MR. OAKS: It did not disturb me.

COL. RICHARDSON: Did not disturb anybody else, did it?

MR. OAKS: No, sir.

COL. RICHARDSON: How long was Mr. King engaged at work?

MR. OAKS: I do not know.

COL. RICHARDSON: It was not calculated to disturb anybody, was it?

MR. OAKS: No, sir; he was not making any noise about it at all.

Mr. King working quietly.

COL. RICHARDSON: Did your ever see him at work, doing any kind of work, performing any secular labor on any of the public roads, or at any public places on Sunday?

MR. OAKS: No, sir; never did.

COL. RICHARDSON: Whatever you have seen him do was on his own private premises?

MR. OAKS: Yes, sir.

TESTIMONY OF MR. MARSHALL.

COL. RICHARDSON: Did this work disturb you?

MR. MARSHALL: No, sir; it did not disturb me any.

COL. RICHARDSON: Did not annoy you in any way?

Witness not disturbed.

MR. MARSHALL: No, sir; did not annoy me.

COL. RICHARDSON: Where were you going?

MR. MARSHALL: I was going up to Sunday-school.

COL. RICHARDSON: Did you see him at work ten minutes?

MR. MARSHALL: No, sir; I do not know that I did.

Work not calculated to disturb any one.

COL. RICHARDSON: Was he doing anything that was calculated to annoy, injure, vex, harass, or disturb anybody?

MR. MARSHALL: Not as I know.

COL. RICHARDSON: Who was with you at the time he was harrowing?

MR. MARSHALL: Mr. Johnson — Dick Johnson.

COL. RICHARDSON: It did not disturb Dick, did it?

MR. MARSHALL: No, sir.

COL. RICHARDSON: Where were you going when you saw him harrowing?

MR. MARSHALL: To another town.

COL. RICHARDSON: That was on Sunday?

MR. MARSHALL: Yes, sir.

COL. RICHARDSON: What were you going for?

Work of witness.

MR. MARSHALL: To see about hiring some hands.

COL. RICHARDSON: Did these other witnesses here know it? (Answer — Mr. Cole knew it.)

ATTORNEY-GENERAL : I object to that. Objection made.

THE COURT : I sustain the objection.

COL. RICHARDSON : Do you know what Mr. King's reputation was in the community down there as a peaceable, orderly, quiet, law-abiding citizen before the finding of this indictment ?

MR. MARSHALL : Yes, sir.

COL. RICHARDSON : What was it, good or bad ?

MR. MARSHALL : It was good.

Justice Barker was then put upon the stand for the defense, and testified that he had known Mr. King for about twenty-five years, and that his general reputation, with the exception of the Sabbath part of it, was as good as anybody's in the community. But the court refused to allow him to testify to the fact that on the affidavit of Mr. Dobbins he issued a warrant against Mr. King for working on Sunday, June 23 ; that Mr. King was arrested, brought before him, and fined for this ; that Mr. King issued a *mittimus* committing him to jail ; and that fine and costs were collected of him. This closed the testimony in the case. Mr. King's reputation. Previous conviction of Mr. King for same offense.

SUMMARY OF COLONEL RICHARDSON'S SPEECH.

Colonel Richardson then made a plea before the jury, in which he claimed that this indictment was a stroke at the rights of man, and subversive of religious liberty. He held that it was in conflict with the Bill of Rights which the State had adopted as article one of its Constitution, the third section of which says, "No human authority can, in any case whatever, control or interfere with the rights of conscience ; and that no preference shall ever be given by law to any religious establishment or mode of worship." From this he argued that to declare that certain acts are a nuisance because they are obnoxious to certain religious views, or a disturbance to certain religious sentiments, is nothing less than the giving of preference denied by this section. He held that the Sunday law was in conflict with the Constitution of the State, and for that reason inoperative. He claimed that if an act is a nuisance because done on Sunday, then it is because it is obnoxious to some man's religious views ; and if obnoxious on this account, then it is religious legislation — legislation in favor of some sect, some mode of worship, which is in direct contravention of the Bill of Rights which are the declaration of the unalterable and inalienable rights of all men. He asked why it is not as shocking, as immoral, and as indecent for a man to work on Saturday in violation of the belief of the Sabbatarian, as it is for the Sabbatarian to work on Sunday. He also stated that so far as the act of the defendant considered apart from the day was concerned, no man could disapprove of it. It was *the day*, then, and *not the act* that was the question involved.[1] Rights of man infringed. Conviction unconstitutional. Religious preference shown. A difference of gigantic proportions ! Sunday sacredness the pivotal point.

[1] This fact is admitted in some of the decisions on the unlawfulness of Sunday labor. Mr. Chief Justice Ruffin of the Supreme Court of North Carolina, in 4 Iredell, 403, said :

Why are Adventists alone arrested?

In answer to the claim that this was not persecution on account of religious faith, he asked why it was that only those of this particular faith had been singled out, while others who had violated the Sunday law as openly as they, had been allowed to go undisturbed. He called attention to the fact that the defendant's labor was performed in no public place, that it had disturbed no worshiping congregation, nor interfered with any man's business or rights; and yet these men had hounded him like sleuth-hounds following a flying fugitive. In this indictment he said the jury were asked to declare as a crime an act on Sunday which on Monday would be commendable and worthy of all encouragement and approbation. "Woe the day," said he, "when the State or this government shall allow the church to put its hand upon the citizen, upon the conscience of the citizen, or upon the property of the citizen. Sunday laws were the beginning of the power of the Spanish Inquisition in that mighty machinery invented by Ignatius Loyola, and the establishment of them here in this country would be but the beginning and elevation of a like religious body to political power and prominence in the United States. It is dangerous."

Mr. King's labor disturbed no one.

SUMMARY OF ATTORNEY-GENERAL BOND'S SPEECH.

Attorney-General's appeal to prejudices of jury.

The speech of the prosecuting attorney was a tirade against the religious sect of which the defendant was a member, and a reflection upon Northern men, although Mr. King is not a Northern man, all of which was well calculated to arouse the prejudices of the jury. It was so saturated with obscenity and blackguardism that it would not be in place to repeat it entire. The main effort of the speaker was to confound the defendant and those of his religious faith with the Mormons. The following is that part of the speech which is the least objectionable:

His speech.

YOUR HONOR, AND GENTLEMEN OF THE JURY: . . . There were a lot of fellows in the olden time — some Adventists, or Seventh-day Advents, or Mormons, or Mayflower fellows, I do not care which you call them — that believed in human sacrifices, carrying them to the altar, and burning them up as an incense.

COL. RICHARDSON: They were Sunday fellows.

Tirade against Sabbatarians.

ATTORNEY-GENERAL: They were the Mormons or Adventists; that is who they were, taking the children and burning them on the altar as an incense to God Almighty. If you want two women, or four women,

Why Sunday work disturbs us.

"The truth is, that it offends us, not so much because it disturbs us in practising for ourselves the religious duties, or enjoying the salutary repose or recreation of that day, as that it is, in itself, a breach of God's law, and a violation of the party's own religious duty."

The all-important point.

Likewise, in Shover *v.* the State, a decision upholding Sunday laws, *ante* page 417, the court said: "It is not simply the act of keeping open a grocery, but the keeping of it open on Sunday, that forms the head and front of the offense; and when it is alleged to have been done on *that day*, the description is perfect."

Basis of Sunday laws.

All Sunday legislation and all the prosecutions for Sunday labor in the history of our nation, have resulted from religious regard for the Sunday as a day of rest.

why, in the name of God, stay in Salt Lake City where you can have them. Suppose they should come from the same section of that country, Colonel Richardson would say, "You have no right to interfere with the rights of conscience of this people; and you can't interfere with them, because the Bill of Rights says that every man in this country has a right to worship God according to the dictates of his conscience." Burn children, sleep with a dozen women, hang fellows that had long hair, and everything else of that sort! No, sir; away with all such foolishness, and everything of that sort! I do not care anything about the Adventists, or Mormons, whether they are right or not. But when they come here, they must walk up to the rack, and eat the same fodder that our folks eat.

Tirade against Sabbatarians.

COL. RICHARDSON: If your Honor please, I do not think you allowed me any such latitude as that.

Language objected to.

THE COURT: I do not understand that the Attorney-General is charging the defendant as being himself a Mormon, but as illustrating the position of the defense.

Objection overruled.

COL. RICHARDSON: But the Mormons were Sunday observers.

ATTORNEY-GENERAL: Colonel Richardson knows more about the Mormons than I do.

COL. RICHARDSON: I merely wish to take an exception to it.

Exception taken.

ATTORNEY-GENERAL: I do not know whether this short-hand fellow is a Mormon or an Adventist. Got a short-hand fellow to take down what I say. Not satisfied with worshiping God! Oh, no; but with your short-hand reporters, your Mormons, and your Adventists, you want to corrupt not only the whole morals of the country, but you want to control the courts of the country. . . . I wish to God we had more Methodist churches, and more Baptist churches, and more Presbyterian churches, and more Episcopal churches, and more Catholic churches, until every man was brought under the benign influences of these churches; but in the name of God, I do not want any of these Advent churches, or Mormon churches. Guiteau, when he had a revelation from God (and I expect he had a Seventh-day Adventist lawyer to defend him), took a pistol, and shot down the ruler of this nation, and they hung him; and that is what they ought to do with all these fellows. I have no respect for men like that. These fellows never heard from God, and the probabilities are that they never will. Something is said in the Bible about somebody that came up and knocked at the gate. He said I never knew you, I never knew you at all. That is about the way with these fellows. Not satisfied with working on Sunday, and keeping half a dozen women, they come down here and want to save us, and have us keep half a dozen women. . . .

Tirade continued.

Attorney-General posing as St. Peter!

The obscene and filthy utterances of the attorney, which have been omitted, evoked considerable merriment among the visitors in the court-room, the jury, and especially among the leading witnesses for the prosecution, who were devout church members.

Merriment provoked.

STATEMENT OF JUDGE SWIGGART.

Fine imposed.

The jury was out only about half an hour, when they returned a verdict of guilty, and assessed the fine at seventy-five dollars. The counsel for the defendant took exception to the rulings of the court, and the charge given to the jury, and moved a new trial. In refusing to grant a new trial, the Judge said:

Statement of court.

"The law is clear. I charged it properly. The fine is a reasonable one, and one well warranted. The laws are made to be obeyed; and

Sabbatarians must observe Sunday.

Mr. King and all other men should and must obey them, or leave the country. I make these remarks that they may know that I intend to have the laws strictly enforced in the future. Mr. King and his brethren have a right to keep another day if they choose, but as Christian men, it is their duty to obey the laws of the State, and they must do it."

An appeal was taken to the Supreme Court of the State.

Case appealed.

Character of trial.

The whole trial from beginning to end is a clear case of religious persecution, gendered wholly by denominational spite and sectarian animosity. While the prosecution claimed that it was not a question of religion, the vindictive speech of Attorney-General Bond, as well as the rulings of the court and the testimony of the witnesses, shows that it was incited by denominational prejudice throughout.

Evidence of intolerance.

In expressing a desire for more of certain churches and a dislike for certain others, the Attorney-General betrayed the fact that this was simply a religious question,—a question between the churches. In this, too, he seems to have forgotten how some of these very churches of which he desires more, were, in their early history, themselves looked down upon by the old established churches of those times; how the pioneers of Methodism, the Wesleys, George Whitfield, Adam Clarke,

Persecution of the past.

and others, trod a rugged path because of this; how the clergy of England closed their church doors against them, denounced them, and stirred up the people against them; how even mobs were raised to suppress their preaching, and their followers were arraigned before courts, called "courts of justice," but were such only in name; for, like too many of to-day, justice had no place in them.

PERSECUTION OF DR. ADAM CLARKE.

Dr. Clarke, in his comments on Luke iv, 30, gives an account of an experience he had while preaching one evening at St. Aubin, in the island of Jersey, he being the missionary to which reference is made. It is the experience of almost every small and unpopular denomination.

Experience of Dr. Adam Clarke

"A missionary who had been sent to a strange land to proclaim the gospel of the kingdom of God, and who had passed through many hardships, and was often in danger of losing his life through the persecutions excited against him, came to a place where he had often before, at no small risk, preached Christ crucified. About fifty people, who had received good impressions from the word of God, assembled. He

began his discourse; and after he had preached about thirty minutes, an outrageous mob surrounded the house, armed with different instruments of death, and breathing the most sanguinary purposes. Some that were within shut the door; and the missionary and his flock betook themselves to prayer. The mob assailed the house, and began to hurl stones against the walls, windows, and roof; and in a short time almost every tile was destroyed and the roof nearly uncovered, and before they quitted the premises, scarcely left one square inch of glass in the five windows by which the house was enlightened. While this was going forward, a person came with a pistol to the window opposite to the place where the preacher stood (who was then exhorting his flock to be steady, to resign themselves to God, and trust in him), presented it at him, and snapped it; but it only flashed in the pan! . . . They assembled with the full purpose to destroy the man who came to show them the way of salvation; but he, passing through the midst of them, went his way."

Attack of mob.

Dr. Clarke styles this sort of treatment persecution. What but persecution can the very similar treatment of the Sabbatarians in Tennessee be called? or is it an essential of persecution that it should always be in the past?

What is persecution?

PERSECUTION OF THE BAPTISTS.

It will do now to talk about desiring more Baptist churches, when that denomination, by indomitable courage and perserverance, has maintained its doctrines against the fiercest opposition, until it has come to be one of the largest in the United States. But the day was when Baptists were ridiculed, despised, and persecuted as bitterly as are the observers of the seventh day whom Attorney-General Bond so berates; when they, with the Quakers, were hated and hunted like wolves. The Baptists have not forgotten when Roger Williams in 1636 was driven from home, wandered in the woods for weeks in the dead of winter, and was taken in by the Indians, and given the hospitalities denied him by his fellow white men; — have not forgotten when Massachusetts in 1644 made a law to banish them from that colony. They have not forgotten all these cruelties which they suffered in an early day for conscience' sake. The "Christian Herald" of October 3, 1889, a Baptist paper, says:

Feeling toward Baptists formerly.

Persecution of Roger Williams.

"See from the sufferings endured by our Baptist fathers, at what cost this liberty we now enjoy was obtained, and how joyfully those fathers paid the price in the dungeon and at the whipping-post. They counted life itself a thing of no value when called to abandon Baptist principles."

Suffering endured by Baptists.

Much the same might be related of the early history of other denominations. About the year 1675 two Presbyterian ministers, Rev. Francis Makemie and Rev. John Hampton, were arrested and imprisoned for two months for preaching one sermon each in New York, and finally released after paying three hundred dollars for the expenses of the trial.

Similar treatment of other denominations.

A lesson not yet learned.

It is an old mistake to seek to crush out honest convictions by fire and sword, and one which it seems the world should have learned by this time. The great trouble is, many of our legislators, courts, and lawyers do not know the history of nations, not even the early history of our own country; and consequently they are repeating old experiments, that not only have failed ages ago, but have ended in the direst cruelties. It would be fortunate for this country if every citizen would look into the political history of the past few centuries and examine carefully the evolution of the American political system, and learn that it is not the business of courts or legislatures to interfere with things purely religious.

Mr. King's prosecution.

The unjust results of this trial come from the existence of a rigid Sunday law on the statute books of Tennessee, which Mr. King's fellow-citizens, who are entitled to no more protection from the government or the State than himself, have seen fit to take advantage of on account of a difference of religious belief. This manifest injustice should cause not only those who have been the immediate promoters of the prosecution to blush for shame, but every one who is helping forward any movement to have laws enacted throughout the country by which such advantage can be taken. Those who favor the enactment of such laws may paint in fancy sketches the beneficient results which they claim will come from them; but the above case presents solid facts which show the legitimate and actual results of such laws put into effect. No such laws should ever be enacted or allowed to remain upon our statute books. The only safety lies in keeping our statute books free from such laws, and let religious questions be fought out solely upon religious grounds.

Actual results of Sunday laws.

Rights should be guaranteed.

It must be apparent to every intelligent and candid person that a man has the right and should have the privilege of using his time upon his own premises as he sees fit, and not be compelled to conform to the religious opinions and customs of the majority around him. Otherwise, religious freedom is simply freedom to believe and act as do the majority, which is no freedom. The historian Ridpath says, "Essential freedom is the right to *differ*, and that right must be sacredly respected."

Freedom is right to differ.

Mr. King's belief.

Mr. King's difference of practice in the keeping of a day is due to conscientious belief. He observes the seventh day because he believes that is the day enjoined by the Sabbath commandment. He believes that this was the day set apart at creation, observed by the chosen people of God, kept by Christ and the apostles, and never divinely changed. He certainly has a right to believe this, the same as others have to believe otherwise. His belief and practice in this matter should be no more occasion of disturbance to those who believe otherwise than are their belief and practice to him. But if he has rights of conscience which cannot be secured under this government, then religious freedom here is at an end. It remains to be seen whether religious liberty in this country is a reality, or only an empty boast.

"A poor rule that don't work both ways."

SUPREME COURT OF TENNESSEE. 1890.

The Brief Submitted by Colonel T. E. Richardson in the Case of King v. the State.

. . . . . .

Object of Sunday laws.

Can there be any doubt that the act of 1741[1] was passed to favor and promote Christianity, and also the interests of the Church of England, then the religion and church of the state? Is it not equally plain that the act of 1803 was passed to promote and give preference to the Christian religion? that it was passed to prevent the profanation of a day sacred to certain persons claiming to be members of the Christian church, or of certain sects of Christians? This court knows historically, if not judicially, of the wonderful revivals and wide-spread religious excitement in the year 1800. They created a deep and lasting impression upon the people. They prevailed most extensively throughout the States of Kentucky and Tennessee. They were conducted principally by the Presbyterians and Methodists, and the power and influence then obtained by the latter, are felt and seen to the present time.

Revivals of 1800.

Act of 1803 a religious law.

That the act of 1803 was the result of those revivals, and passed in obedience to the behests of those churches and to conform to their religious views, no one can doubt.[2] That the law was enacted to compel the observance of Sunday in conformity with their tenets, and to coerce the conscience of all persons who might differ with those sects, can be denied by no candid mind. By those acts exclusive jurisdiction was given to justices of the peace, to try, and punish, those who violated their provisions. For nearly a century no member of the bench or bar ever dreamed or held that the circuit courts of the State had jurisdiction over the offense, as created by those acts. For a half century or more after the passage of the act of 1803, it was regarded as the expression of earnest but fanatical zeal, and was allowed to fall into "innocuous desuetude." It is the fit instrument of petty persecution, and has been seldom used, even by the most earnest of zealots.

Sunday law a dead letter.

To the credit of the Christian people of the State, it can be truly said, they have generally scorned to use such means of persecution or coercion. . . .

[1] An act passed under Governor Gabriel Johnson, Esq., by and with the consent of King George II's council, and the General Assembly of the province of North Carolina, when the church was a part of the state. It required that "all and every person or persons whatsoever shall on the Lord's day, commonly called Sunday, carefully apply themselves to the duties of religion and piety." The fine for each offense was one dollar and twenty-five cents.

[2] This is admitted by Rev. W. F. Crafts, one of the leading advocates of Sunday laws in this country. In the "Christian Statesman" of July 3, 1890, he said: "During nearly all our American history, the churches have influenced the States to make and improve Sabbath laws."

Jealous defenders of liberty.

The framers of the Constitution have ever been jealous of any attempt to interfere with the rights of conscience, or the domination of any church or religious sect. In recent years, efforts have been made to revive and enforce the law of 1803, and by *judicial legislation*, the offense enacted by that act has been declared a nuisance at common law. . . .

Judicial legislation.

Why is Sunday work a nuisance?

Why is the act complained of declared to be immoral and unlawful? Why are a succession of such acts declared to be a nuisance and indictable? Because they have been done on Sunday? Then it must be because it is repugnant to the religious views of the community. If it is a nuisance, why is it not such on Monday or Saturday, as well as on Sunday? The answer is, Because the work is done on Sunday. If it is an offense because done on Sunday, then the law declaring such acts to be illegal and immoral is a religious law, enacted for the purpose of favoring some religion. If that be so, then the law is in violation of the Constitution. . . .

Sunday law unconstitutional.

Our political system not founded on Christianity.

Equality of all religions.

The government, State or federal, can in no sense be said to be founded or based upon Christianity.[1] No preference can be given to any religion. All religions are alike protected. The followers of Mahomet, the disciples of Confucius, the believers in Buddha, as well as the worshipers of the true and living God, are entitled to like protection, and are secured in the enjoyment of the same rights. In this State, in this nation, there is no such thing as "religious toleration."[2] Every man enjoys the same right of conscience, and is responsible to no earthly tribunal for his religious faith and worship. The assumption, therefore, that Christianity is a part of the law of the land, is inconsistent with the spirit of our institutions, as well as in violation of the reserved, accepted, and inalienable rights of the people. . . .

An inconsistent assumption.

Praiseworthy labor.

It goes without saying that plowing, the occupation of the farmer, is necessary for the comfort, and even the existence, of the citizens. Can it be said with propriety or reason, that this act so essential for the welfare of society, so commendable when done on Monday, when done on Sunday becomes offensive, immoral, and a common nuisance? Is it not true that to hold that it becomes a nuisance when carried on on Sunday, is a perversion of the term "nuisance"?[3]

A perversion of law.

[1] For a discussion of this question, see Hon. Allan G. Thurman's decision, page 419; opinion of the Supreme Court of Ohio, page 460; Jefferson's Essay on "Christianity and the Common Law," page 208; Tripolitan treaties, *ante* pages 162, 164.

[2] See Report of the United States Senate, *ante* page 233, and note.

[3] On this point, Colonel Richardson, on pages 2 and 3 of his brief, said:

Sunday labor not a nuisance.

"The acts complained of and proven, do not constitute a nuisance, as defined by this court in State *v.* Lorry, 7 Baxter, 95. A nuisance is something that injuriously affects the comfort, or welfare, or enjoyment of human existence, and must affect all alike who come within its influence. It must be something more than a mere spiritual discomfort. . . . In determining as to a nuisance, the true rule seems to be that the act or thing complained of affects all alike who come within its influence. It is not a nuisance to one of peculiar sentiments, feelings, or tastes, if it would not affect others or all tastes; not to a sectarian, if it would not be so to one belonging to no church. It must be something about the effects of which all agree. See Sparhawk *v.* Union Pass Railroad Co., Pennsylvania State, 51, P. F. Smith, volume 4, page 427.

Sunday laws grew out of church and state.

The establishment of Sunday as a day of rest and worship, grew out of the union of church and state, was commanded by ecclesiastical law, and the enforcement of its observance is contrary to the spirit and purpose of our form of government. . . .

It was the spirit of the Sunday laws that banished Baptists, whipped the Quakers, and hung and burned women as witches, in the pious New England States.[1]

Such laws have found favor and a congenial home only when there has been a union of church and state. On such legislation is based the statements and utterances of Mr. Blackstone,[2] in his commentaries referred to, and relied on as authority by this court, in the cases herein cited. They are contrary to the letter and spirit of our Constitution and of free government. No human law has a right to interfere with a man's religious belief, his freedom of conscience, his right to worship his Creator when and how he will, so long as he does not trespass on the rights of others. . . .

Contrary to our Constitution.

Our written Constitutions and our laws were made and intended for the protection of minorities — for the protection of the weak against the strong. Majorities and the powerful can protect themselves. But it is insisted that the act of 1803 and the opinions in Gunter *v.* the State and Parker *v.* the State, do not require that he shall work on Saturday, the Sabbath. Admitted. But they do coerce his conscience. They do require him to keep and observe a day he does not believe to be holy or sacred — a day *he* knows his Creator does not require him to keep. . . . They do compel him to a religious observance repulsive to his conscience. They do give preference to a mode of worship which is contrary to his faith. It is conceded that in following his usual avoca-

Constitution for protection of minorities.

Compulsion in Sunday laws.

The proof shows that the work charged in the indictment was done by King in his own private field, in the country, remote from any town; that it was not in a public place; that no crowd or assemblage was there; that the people had no right or occasion to meet or assemble there; and that the persons who claimed to be disturbed were disturbed or excited only because of their religious views." See the testimony in the case, *ante* page 680, especially that of witnesses Oaks and Marshall, pages 687, 688.

Nature of Mr. King's work.

[1] The so-called witches were not the only persons who were hanged. Quakers were also thus disposed of. Brooks Adams gives a chronological summary of these hangings in his recent work, "The Emancipation of Massachusetts," and on page 139 says:

Hanging of Quakers.

"A last effort was made to rekindle the dying flame in 1675, by fining constables who failed in their duty to break up Quaker meetings, and offering one third of the penalty to the informer. . . . Marmaduke Stevenson, William Robinson, Mary Dyer, and William Leddra were hanged, several were mutilated or branded, two at least are known to have died from starvation and whipping, and it is probable that others were killed whose fate cannot be traced. The number tortured under the Vagabond Act is unknown, nor can any estimate be made of the misery inflicted upon children by the ruin and exile of parents."

Speaking of the spirit which has always characterized prosecutions of offenders against the cherished institutions or beliefs of the dominant sect, Mr. Adams says:

Spirit which characterizes religious prosecutions.

"Howsoever bitterly Catholic and Protestant divines have hated and persecuted each other, they have united like true brethren in their hatred and their persecution of heretics; for such was their inexorable destiny."

[2] See *ante* page 220, *et seq.*

Limitation of rights.

tions, he has no right to incommode or interfere with or disturb the religious worship of others.

It is insisted that this law is in conformity with the religious faith of the majority of the Christian people, and that working upon Sunday is repulsive to them, and repugnant to their ideas of propriety and morality. Granted. That is a matter between them and their God. Is it not equally as offensive and repulsive to the plaintiff in error, to see the constant, open, and habitual violation and desecration of a day he holds to be holy and sacred? Is he not entitled to the same consideration and protection as the majority, or those who keep and observe Sunday? are you not giving preference to a "mode of worship" when you hold that he shall rest and observe Sunday because it is the holy day of the majority, and that the day he holds in reverence can be violated with impunity? What is this but giving a preference to a religious establishment and mode of worship, and a denial of the natural and indefeasible right to worship Almighty God according to the dictates of conscience, whether it is done by legislative enactment or judicial construction?

"A poor rule that don't work both ways."

Showing religious preference.

A perversion of the term "nuisance."

Well was it said by the able and distinguished late chief justice of this court, that "to hold that barbering on Sunday was a nuisance, is a perversion of the term 'nuisance.'" *A fortiori* can his ruling be applied to plowing on Sunday, by a quiet, orderly citizen, in his own field, in a secluded part of the country, and in the discharge of what he conscientiously believes to be his duty to his God and his family. . . .

Amount it costs to violate the teachings of the dominant cult.

A fine of seventy-five dollars is imposed, to appease the demands for vengeance. Seventy-five dollars and costs are demanded of Mr. King, as due punishment for an act of which the law of the State for nearly one hundred years had declared the penalty to be ample when fixed at three dollars![1]

[1] As severe as these Sunday laws are found to operate on the laboring man, many of the petitions and arguments for Sunday legislation present the plea that the "poor, overworked laboring man" suffers where we do not have the Sunday law to protect his interests. But the absurdity of such pleas are manifest; for *laboring men are the very men who are made to suffer by these Sunday laws*, Messrs. King and Parker of Tennessee, and their brethren, for example. Sunday laws are intended to enforce regard for the day the majority consider as sacred,—not to protect the laboring man. "The 'American' Sabbath must be protected!" is their watchword; and they are resolved to protect Sunday—by law, too—whether the laboring man, or any other man, is benefited or oppressed. The laboring classes do not, as a whole, wish all means of enjoyment and recreation prohibited on Sunday; they do not wish libraries, museums, and art galleries closed, nor excursion trains, picnics, and driving stopped. On the contrary, they frequently plead the need of the benefits of these various means of physical rest and mental culture which they say they can obtain only on the first day of the week. They even raise their voices against these oppressive ecclesiastical laws. This fact is reluctantly admitted by Rev. W. F. Crafts in his book appealing for Sunday laws. He says:

Hardship caused by Sunday laws.

Opposed by laboring men.

Resolution of a labor union.

"Blind to these great facts [the blessings of strict Sunday observance], a shoe-lasters' union in Brooklyn, at the publication of the new Penal Code of New York in 1882, adopted a paper which thus describes the Sabbath laws: 'We learn with regret that the churches are joining hands with tyranny and capital for the purpose of suppressing liberty and oppressing the laborer'—sentiments representative of many labor organizations, which show that holiday Sundays prevent those who follow them from

The verdict and judgment are a travesty on justice; the fine imposed is altogether disproportioned to the act; the verdict shows that it is the result of prejudice, of intolerance, of fanatical zeal; it shows the beginning of a revival of religious persecution, that has so often cursed humanity. It is another exhibition of "man's inhumanity to man." It merits, and I doubt not will meet, the reprobation of this high tribunal, — the last refuge and asylum of the oppressed and persecuted citizen. The dangers and evils that must result from the making and enforcement of Sunday laws, are fully illustrated in this case; this verdict shows the necessity of returning to constitutional methods, the protection of inalienable rights, the danger of judicial and religious legislation, the absolute necessity of keeping forever separate the powers and functions of church and state.[1]

A travesty on justice.

"Man's inhumanity to man."

Necessity of forever separating church and state.

Christianity needs no legislation or judicial aid, beyond the protection of its adherents in their right to worship according to the dictates

Christianity needs no state aid.

learning the a-b-c of political science, and keep them in such ignorance of the true meaning of liberty that they mistake its champions for oppressors." "The Sabbath for Man," page 226.

Mr. Crafts also inadvertently admits that the laboring man will not suffer, but rather be the gainer, by a strict observance of Sunday, even where Sunday is not regarded. On pages 428, 429 of the same work, he says:

"Among other printed questions to which I have collected numerous answers, was this one: 'Do you know of any instance where a Christian's refusal to do Sunday work or Sunday trading has resulted in his financial ruin?' Of the two hundred answers from persons representing all trades and professions, *not one is affirmative*. A Western editor thinks that a Christian whose refusal to do Sunday work had resulted in his financial ruin would be as great a curiosity as 'the missing link.' There are instances in which men have lost places by refusing to do Sunday work, but they have usually found other places as good or better. With some there has been 'temporary self-sacrifice, but ultimate betterment.' . . . Even in India, where most of the business community is heathen, missionaries testify that loyalty to the Sabbath in the end brings no worldly loss. On the other hand, incidents have come to me by the score, of those who have gained, even in their worldly prosperity, by daring to do right in the matter of Sunday work."

No need of Sunday laws.

[1] John Fiske, in speaking of the first decennium of our nation, in "The Critical Period of American History, 1783–1789," pages 76, 77, writes the following in reference to Sunday prosecutions a century ago:

"By the revolutionary legislation of the States some progress was also effected in the direction of a more complete religious freedom. . . . The tithing-man still arrested Sabbath-breakers, and shut them up in the town-cage in the market-place; he stopped all unnecessary riding or driving on Sunday, and haled people off to the meeting-house whether they would or not. Such restraints upon liberty were still endured by people who had dared and suffered so much for liberty's sake. The men of Boston strove hard to secure the repeal of these barbarous laws, and the disestablishment of the Congregational Church; but they were outvoted by the delegates from the rural towns."

Sunday laws a century ago.

Attempts to repeal them.

The following extract from the diary of John Adams, himself from Massachusetts, also shows how tenaciously the New-Englanders clung to their religious laws:

"I knew they [those endeavoring to unite the colonies] might as well turn the heavenly bodies out of their annual and diurnal courses, as the people of Massachusetts at the present day [1774] from their meeting-house and Sunday laws."

Tenacity of Sunday-law advocates.

It is these "barbarous laws" from which our early statesmen strove so earnestly to free themselves, that religio-political "reformers" are again endeavoring to fasten upon the American people.

Christ wants no state aid.

of their own consciences. "My kingdom is not of this world," said the Saviour, and no human laws are required to secure the triumph of the Christian faith. The arm of secular government is not needed to enforce the commands of the world's Redeemer.[1] . . .

Nature of work.

What is there in the acts proven tending to the corruption of the public morals, that was a disturbance of the community, that was offensive to the moral sense of the public, or a common nuisance? Only three men can be found who say there was anything offensive, and they only show that their sense of propriety was shocked. The other two witnesses for the State say they were not disturbed or annoyed, and saw nothing that was offensive.

Privacy of work.

The work was done on King's own premises, where he had a right to be. It was not done in a public place; it was not done where the

[1] Treating of the absurdity of government dealing with questions entirely foreign to its sphere, Mr. Minot J. Savage, in "The Forum" of September, 1890, truly says:

A much-needed reform.

"One of the most needed, as it is one of the most difficult, of all reforms is that which aims at having the state mind its own business. This includes two things — letting alone what is not its business, and really minding what is. In the light of legal history, one of the most curious things is the still-surviving popular faith in mere laws as means for preventing evil and accomplishing good. The statute books of even our young country are chiefly old lumber rooms. But, beyond this and more mischievous still, is the fact that the state is continually legislating concerning things that are beyond the limits not only of its rightful, but even of its possible, jurisdiction. Many of its attempts are as impracticable as would be a legal interference with the force of

Absurd legislation.

gravity. Should Congress enact laws concerning things in India, all the world would smile. But not our country only, nearly all countries, are still passing laws that imply a claim of jurisdiction over other worlds and other states of existence. They are passing laws that attempt to deal with inner conditions of consciousness — with metaphysical subtleties, over which philosophers and ecclesiastics are still wrangling. People want laws passed not only for the protection of life and property and for securing good conduct here and now, but they want laws the causes of which are supposed to come from

Erratic notions.

other worlds, and for ends which issue only in other worlds. In brief, they are continually confounding the functions of the priest, the preacher, the philosopher, or the metaphysician with those of the legislator.

Descent of theocratic ideas.

"Unreasonable as this may seem to be, the causes of it are easily traced. Originally, all governments were theocracies. The gods were but supernatural chiefs, clothed by superstitious imaginations with unknown and therefore awful powers. Whether their representative were priest or king, their supposed will superceded all other considerations. Even now, it is only here and there, and very slowly, that any of the

Conservatism of governments.

nations are beginning to put considerations of human well-being in place of barbaric traditions of assumed authorities. Perhaps the larger part of all the government of the past has been dictated by considerations supposed to emanate from other worlds and issue in them. And precisely this part of all government has always been the most cruel and the most unjust.

Present ideas.

"We are slowly reaching a point at last where the most civilized peoples are beginning to see, with at least partial clearness, that the functions of the state should be limited to the practical matters of conduct in this life, and to their bearing on the liberties and rights of men as citizens. The philosophers may reason of ethical origins and principles, and of supersensual sanctions. The metaphysicians may speculate as to transcendental causes and results. Theologians may theorize as to what was in 'the mind of God,' of which actual facts are only a partial expression. For my present purpose, I question neither the right nor the wisdom of these things. But the point I wish to make is this, that, whether true or false, these things do not concern the state as such."

public had a right to be! There was no crowd, or assemblage of people, when the work was done. The people had no right to assemble there. The work was not done in a place or in a manner calculated to disturb or offend the public, because the public had no right or occasion to assemble there. It is a new assumption and assertion to say that the work done by Mr. King, as described by the witnesses, was immoral, or prejudicial to public morals, or a common nuisance. The morals that were or could be prejudiced or corrupted by what the witnesses saw and have detailed, must be weak indeed. Such morals are scarce worth the protection of the courts, and will not do to come in contact with the world. It is worse than a "perversion" of the word "nuisance," to denounce and hold that the working of Mr. King was a common nuisance.

It could not be a nuisance.

To affirm the judgment can but result in evil, and only evil; it will be to rekindle and cause to burn afresh, the fires of religious persecution; for behind and pressing the prosecution, is the spirit of bigotry, intolerance, and religious persecution. It is religious persecution. It is the very spirit of the Inquisition. It is the spirit of religious persecution, in every land, in every age, wherever found. It is the spirit that instigated the "Massacre of St. Bartholomew." It is the spirit that inspired the "Sicilian Vespers." It is the spirit that revoked the Edict of Nantes, and lighted the fires of Smithfield. It is the spirit that moves and governs those who demand and clamor for the passage by Congress of the Blair Sunday-rest bill,[1] and the District of Columbia Sunday bill. . . .

Religious persecution.

Spirit permeating Sunday laws.

[1] In reference to the re-introduction of the Blair Sunday bill, the "Independent" of Litchfield, Minnesota, makes the following truthful observations:

"Since the present session of Congress opened, Senator Blair has re-introduced his famous Sunday-rest bill. He has changed the title and made other modifications in the bill to disarm opposition. One of the most important is a sop thrown to the Seventh-day Adventists in a proviso exempting them from the operations of the bill. Notwithstanding these disguises and concessions, the spirit of the bill remains the same. The principle is wholly, radically, and fundamentally wrong, and it matters little how the act is doctored and tinkered to satisfy this or that element of opposition. We hope Congress will sit squarely down on it. It matters not what pleas are urged in favor of the bill — that it is in the 'interest of the laboring man to secure him a day of rest,' etc. There may be some truth in this, but the fact remains that the real object of the bill is coercion of those who differ from the prevailing religious observance of this nation." Quoted in the "Christian Statesman," Philadelphia, May 8, 1890.

Blair Sunday bill.

The Blair educational amendment, providing that the "unsectarian principles of Christianity" shall be taught in the public schools, was equally subversive of American principles. On the question of religious instruction in the public schools, Dr. Tiffany, a Methodist pastor of Minneapolis, Minnesota, in an address at a high school commencement, stated the following sound principles:

Blair educational amendment.

"Church and state must not be united. As Americans, we deny the right of any religious or other combination to have authority in civil matters. We recognize religion as a necessity, and the church as a form of it; but we look with suspicion upon any interference it may attempt in government. . . . Home shall teach youth obedience, the churches religion, but the schools shall give knowledge. The state must not teach religion, for that would give it authority to decide what religion to teach. The state must educate the children to make them intelligent, not saints." "Post," Rochester, Minnesota, July 13, 1890.

American principles.

Sunday laws a stepping-stone to further religious legislation.

The enforcement of Sunday laws is the initial step by which they [religio-political organizations] hope to reach their ends, and crush out all freedom of thought and individual opinion. These organizations or societies, not content with thrusting themselves upon legislative bodies and seeking to gain political power, are attempting to invade the very Temple of Justice. They hang as a portentous cloud upon the political horizon, ominous of evil. By their acts they say that the "saints shall inherit the earth, and we are the saints!"

Effect of adhering to an unjust precedent.

If the ruling in Parker *v.* the State[1] shall be adhered to, personal government, paternalism, will be the established law, while spiteful persecution and petty prosecutions will fill the courts to overflowing. Every man will be forced to adjust his conscience and his faith to fit and fill the bedstead of some religious Procrustes; this boasted "land of the free" will be such no longer.

Plea for Sabbatarians.

For protection from persecution and threatened danger, the plaintiff in error invokes the aid and interposition of this court; he craves the boon of living and worshiping as his conscience dictates. In their present condition, well may he and his brethren exclaim in the words of St. Paul, "We are troubled on every side, yet not distressed; we are perplexed, but not in despair; persecuted, but not forsaken; cast down, but not destroyed."

Importance of the case.

The determination of the case is important, not only to the appellant, but to the people of the whole State. With confidence, with perfect trust, the cause of my client, carrying with it the cause of religious liberty and of personal freedom, is submitted to the calm and impartial judgment of this court of last resort.

Other Sabbatarians prosecuted.

[1] Parker *v.* the State is another case of prosecution of Sabbatarians which occurred in 1886. Mr. W. H. Parker lived at Springville, Tennessee. About a score of prosecutions of this kind occurred among the members of the Seventh-day Adventist church at this place alone. His case was taken to the Supreme Court of the State, and notwithstanding the fact that the statute against Sunday labor in Tennessee does not make such labor an indictable offense, but subjects the offender to a fine of only three dollars, recoverable before the justice of the peace, it was there decided that "a succession of such acts becomes a nuisance, and is indictable." The decision of the lower court was confirmed, and his fine and costs, amounting to sixty-nine dollars and eighty-one cents, imposed. These he refused to pay, believing that to do so would be a compromise of his principles by acknowledging the justice of the law and of his conviction under it. Consequently he was sentenced to serve out the amount in jail, which would require a period of two hundred eighty days. Taken from his wife, who at the time was in a delicate condition, and from a child who was under the doctor's care, he, with two other men, Mr. James Stem and Mr. William Dortch, was committed to jail, where he and Mr. Stem contracted malarial fever. On account of his sickness he was released after being in jail fifty-nine days, upon giving bonds to return when he got well. In two months he returned, and worked out the balance of his sentence, serving in all an imprisonment of seventy-four days. From the effects of the malaria he never fully recovered, and later lost his health entirely, being unable longer to support his family, in consequence of which they were brought into destitute circumstances.

Evil consequences.

BRIEF BY HON. DON M. DICKINSON.

[In 1891, the Supreme Court of Tennessee rendered its decision in the King case, confirming the sentence and fine imposed by the Circuit Court of Obion county. In the appeal from this to the Circuit Court of the United States for the western district of Tennessee, on a writ of habeas corpus, Hon. Don M. Dickinson, Postmaster-General in 1888-89, was associated with Col. T. E. Richardson as counsel for the petitioner. From a thirty-six page brief prepared by Mr. Dickinson in this appeal, the following extracts are taken.] 1891.

It appears by the Bill of Exemptions, settled by the learned trial court, which is a part of the record of the Supreme Court of the State, that the testimony for the prosecution was substantially this: King had carried on the business of farming in Obion county for about twenty years. He was a good and orderly citizen, peaceable, well disposed, and liked by all his neighbors, who found no fault in him, except that he belonged to the Seventh-day Adventists, and while keeping the seventh day of the week in accordance with the tenets of his faith, tilled his farm on Sunday. Appeal to U. S. District Court. A good citizen.

It is now one of the great duties of the federal government to see to it that no citizen or person in any State shall be deprived of liberty by any State power or authority, legislative, executive, or judicial, except under the law of that State, statute or common, and by legal and orderly proceedings under that law.

It necessarily follows that when any person is deprived of his liberty in any State, and violation of this guaranty is alleged, it is made the duty of the courts of the federal system, by Congress, to inquire whether he has been imprisoned under "the law of the land" and lawful proceedings, *i. e.*, the law and the proceedings of the State authority. For this purpose the right to the writ of habeas corpus is given by the act of Congress.

King had already been prosecuted, convicted, and fined before a magistrate, for the offense of plowing on Sunday, in June, 1889, under section 2289, *supra*, and, of course, no one has urged that the indictment was for any offense indictable and punishable under any section of the code. Validity of indictment questioned.

It is certainly true that the public and notorious repetition of an act which is offensive to morality, as modern civilization fixes the standard of morality, may be punished as a nuisance. . . . But it is equally true that in this country, the standard and definition of morality and good order which may be thus offended, under the law, is not one fixed by any sect, or tested by any creed. Much less it is true that there can be superadded to that code of morals, which is at the base of civilized society, and has regard to the family relation, the rights of property, the sacredness of the person, the public peace and the like, all within the protection of fundamental law, a precept of mere religious faith, be it Christian, Mahometan, Jewish, Bud- Standard of morality not fixed by sect or creed.

dhist, or pagan, that is not *a priori*, necessarily and essentially a part of the organic law for the preservation of social order, irrespective of its character as a part of any religious creed.

Church dogma not to be set up as rule for legal morality.

Still less is it true in this country, that a dogma of one sect of Christians, though concurred in by all other sects of Christians, except one, can be set up as a rule of legal morality for the dissentient sect, for violation of which its members may be punished under the principle of that law, which, in the absence of any statute, punishes murder, theft, licentiousness, polygamy, assault, public disturbance, drunkenness, and violation of the public peace.

Doubtless, but for the provisions of State Constitutions, securing liberty of conscience in the matter of religious belief and practice, valid State laws might be enacted, enforcing observance of the creed and belief of any religious sect which might obtain control of State authority. This was certainly true prior to the Fourteenth Amendment; as we have seen that before that amendment the guaranty of religious liberty in the Constitution of the United States, had no application to the States.

The principle applied.

So, inasmuch as the adherents of all religions are political equals in this country, as regards the election franchise, and are equally eligible to office of every kind, it is properly conceivable that some other sect than Christians — the Hebrew, or any other — might control the lawmaking power of a commonwealth, and set up infractions of its peculiar precepts, as crimes. It is conceivable that some State, untrammeled by the constitutional prohibition, or after repealing such prohibition, might pass a valid law, punishing the celebration of mass, or prayers to the Virgin, or the immersion of converts in baptism. Would it follow in such a State, with such a statute, that the fact of the existence of such provisions upon the statute book, made all these acts of worship such offenses against decency and morality, as that their public and notorious repetition would constitute a nuisance at common law?

Would Protestants and Catholics acquiesce?

But suppose the Seventh-day Adventists and the Jews should come into political control of a State, even with a Constitution like those of this and other States, and resting their reasoning as to the validity of such an enactment upon the logic of all our courts which have sustained laws punishing Sabbath-breaking, should enact statutes fixing upon Saturday as the day of rest, and prohibiting all secular labor upon that day under pains and penalties. Would our fellow-citizens of the Protestant and Catholic faiths acquiesce in the position, not only within the reasoning of their own judges, that a day for suspension of work is set apart, not for worship, not for a holy day, not because its observance is required by divine precept, but as a civil regulation, adopted in accordance with the common judgment of mankind, that one day out of seven is necessary to health and happiness; but also that because the law had fixed Saturday as

that day, a Christian farmer, a good neighbor, law abiding, peaceable, and just, might be punished for nuisance, as for an immoral, indecent, and disorderly act, for quietly tilling his field on Saturday instead of Sunday, his day for rest and worship?

The right to labor.

In any view it is difficult to reconcile with the principles of good morals, of good order, and of public duty, any statute which prevents any citizen or member of the community from engaging in honest labor more than two days out of seven. If we go to divine precept we find a plain command, "Six days shalt thou labor."

Thiers, in his "*De la Propriete*," 3647, says: "The obligation to labor is a duty, a thing ordained of God, and which, if submitted to faithfully, secures a blessing to the human family."

Justice Field in his dissenting opinion in the Slaughter House cases, 16 Wall., 116, quotes Adam Smith in his "Wealth of Nations," where he says:

"The patrimony of the poor man lies in the strength and dexterity of his own hands; and to hinder him from employing this strength and dexterity in what manner he thinks proper without injury to his neighbor, is a plain violation of this most sacred property."

The learned justice adds, in his own terse language:

Sunday laws infringe this right.

"The right of free labor is one of the most sacred and imprescriptible rights of man."

It is unnecessary to urge any other constitutional ground for the discharge of King. The record discloses a case savoring so strongly of religious persecution that the position could, in our opinion, be sustained, that King has been discriminated against because of his religious belief, and within the meaning of the Fourteenth Amendment has been "denied the equal protection of the laws."

Savors of religious persecution.

OPINION OF JUDGE HAMMOND.

Aug. 1, 1891.

August 1, 1891, the Circuit Court of the United States for the Western District of Tennessee rendered its decision in the King case, refusing to grant his petition for relief, under *habeas corpus* proceedings, from enforced Sunday observance. In rendering the decision, Judge Hammond admitted that but for his allegiance to the principle that, as a matter of evidence, the verdict against Mr. King was conclusive, he would "have no difficulty in thinking that King had been *wrongfully convicted.*" He also tacitly admitted a practical union of church and state in Tennessee, by alluding, by way of contrast with the Seventh-day Adventists, to the fact of "*other sects having control of legislation in the matter of Sunday observance.*" That Sunday laws are virtually church affairs, he further showed by disclaiming the right of Mr. King, as a Seventh-day Adventist, or some other as a Jew, to "disregard *laws made in aid,* if you choose to say so, *of the religion of other sects.*" And while denying that the fourth commandment is a part of our common law, he said:

A tacit admission of wrongful conviction.

Admits sects control legislation.

Sunday laws made in "aid" of sects.

An unwarranted advantage tenaciously held to.

"Nevertheless, by a sort of factitious advantage, the observers of Sunday have secured the aid of the civil law, and adhered to that advantage with great tenacity, in spite of the clamor for religious freedom and the progress that has been made in the absolute separation of church and state, and in spite of the strong and merciless attack that has always been ready, in the field of controversial theology, to be made, as it has been made here, upon the claim for divine authority for the change from the seventh to the first day of the week. Volumes have been written upon that subject, and it is not useful to attempt to add anything to it here. We have no tribunals for its decision, and the effort to extirpate the advantage above mentioned by judicial decision in favor of a civil right to disregard the change seems to me quite useless. The proper appeal is to the Legislature; for the courts cannot change that which has been done, however done, by the civil law *in favor of the Sunday observers.*"

This decision also, in a way, upheld the right of a Sunday-keeping majority to engage in "persecutions" against observers of another day under certain circumstances, in the following language:

"If the human impulse to rest on as many days as one can have for rest from toil, is not adequate, as it usually is, to secure abstentions from vocations on Sunday, one may, and many thousands do, work on that day without complaint from any source; but if one ostentatiously labors for the purpose of emphasizing his distaste for or his disbelief in the custom, he may be made to suffer for his defiance *by persecutions,* if you call them so, on the part of the great majority, who will *compel him to rest when they rest.*"

Right to persecute upheld.

That a new turn had been taken in interpreting the State Sunday law, in its late applications to observers of the seventh day, in such a way that the violation of a law with only a three-dollar penalty became a very serious offense, punishable by heavy fines and long imprisonments, is noted in the concluding paragraph of the decision, in the following words:

A new interpretation of the law.

"Whatever plenary power may exist in the State to declare repeated violations of its laws and the usages of its people a nuisance and criminal, until the case of Parker *v.* State, *supra,* and until this case of King [both Seventh-day Adventists], to which we yield our judicial obedience, there seems not to have been any law, statute or common, declaring the violation of the statutes against working on Sunday a common nuisance. . . . In this sense it may be said that King was wrongfully convicted, the State *v.* Lorry wrongfully overruled, and Parker *v.* State wrongfully decided; but it does not belong to this court to overrule these decisions, and it does belong to the State court to make them, and King's conviction under them is 'due process of law.' Remand the prisoner."[1]

Wrong conviction admitted.

Legality of proceedings sustained.

[1] "The Federal Reporter," volume 46, pages 905-916.

RELIGIOUS INTOLERANCE IN THE REPUBLIC.[1]

Dec., 1892.

CHRISTIANS PERSECUTING CHRISTIANS IN TENNESSEE.

FROM THE BOSTON "ARENA."

A heinous crime.

On the 18th of last July, a moral crime was committed in the State of Tennessee; a crime which should fire with indignation every patriot in the land; a crime over which bigotry gloats, and fascination exults; a crime so heinous in its character and so vital in the far-reaching principles involved, that any man acquainted with the facts is recreant to his manhood if he remains silent; a crime which reveals in a startling manner the presence and power in our midst, of that spirit of intolerance which almost two thousand years ago pursued to the cross, nay, further, taunted in the throes of death's agony, a great, serene, God-illumined soul.

Teachings of Christ.

The great Prophet of Nazareth had asserted the rights of man, and had declared that man was to be judged by the fruits shown in life, and not by observances of rights, forms, or dogmas. He had declared that the Sabbath was made for man, and not man for the Sabbath. He had given as the supreme rule of life for all true disciples a simple but comprehensive law, "Whatsoever ye would that men should do to you, do ye even so to them." That was the sign by which in all ages his disciples should be known, and none knew better than this pure and tender soul that that rule carried out would forever crush the spirit of persecution and intolerance, which from the dawn of time had fettered thought and slain the noblest children of men.

In what Christianity consists.

Similarity to Christ's persecution.

The crime committed in Tennessee was very similar to the crime committed in Jerusalem more than eighteen hundred years ago. The animating spirit was precisely the same. The crime committed in Tennessee was, moreover, exactly similar in nature; that is, it involved precisely the same principles as those crimes against which enlightened thought to-day recoils, and which lit up the long night of the Dark Ages with human bonfires, and drove to death for conscience' sake the noblest hearts and purest lives of Europe, because

Dark-age theories.

1 This vigorous article is from the pen of the talented editor of the Boston "Arena," Mr. B. O. Flower, published in the December (1892) number of his magazine, and sets forth in its true character the work of the Sundayists and the workings of Sundayism. The Sunday laws result in evil and in evil only, and the sooner the American people see the real inwardness of this whole Sunday movement, the sooner will the nation be ridded of the unjust, uncivil, and unamerican Sunday laws, which now disgrace many of our statute-rolls.

Evils of persecution.

the victims could not conscientiously conform to the dogmas which the vast majority believed to be the will of God. Strange, indeed, that the closing years of the nineteenth century should witness, flaming forth, the same spirit of insane fanaticism against which the Reformation made such an eloquent, and, for a time, successful protest. And in the present instance, as in the religious persecutions of the past, the crime has been committed in the name of justice. Victor Hugo, in speaking of the social structure in France in 1760, said: "At the base was the people; above the people, religion represented by the clergy; by the side of religion, justice represented by the magistracy. And at that period of human society, what was the people? — It was ignorance. What was religion? — It was intolerance. And what was justice? — It was injustice." And so I think the historian of the future, from the noble heights of a golden-rule permeated civilization, will point to such deeds as have recently been committed in Tennessee, as illustrating the cruel indifference of a pretended civilization which could tolerate such enormities without a universal protest.

Crimes in the name of justice.

In the light of the future.

Character of the crime.

I will now briefly outline the facts involved in this crime against justice and liberty, which has been committed in the name of law and through the instrumentality of a spirit which is the unmistakable and undeviating mark of savagery, as opposed to the spirit of Christ; a spirit which is at the present time exerting its power through organization, and like a canker worm at the tap root of the giant oak, is assailing the vitals of free government; a spirit which I profoundly believe is to-day the most dangerous, as it is the most insidious, evil which menaces republican government.[1]

The facts relating to the persecution in Tennessee are briefly as follows:

Facts of the case.

At the town of Paris, Henry county, Tennessee, on the 18th of July, 1892, three conscientious, law-loving, God-fearing Christian men, who had been lying in jail for a month and a half, were marched through the streets, in company with some colored criminals, and put to work shoveling on the common highway. All were men of families. One

[1] This intolerant spirit has been crystallized with such organizations as the American Sabbath Union, the National Reform Association, the International Reform Bureau, the American branch of the Lord's Day Alliance, and certain leagues or clubs formed in the cities, which have for their object the enforcement of Sunday observance. Such organizations are not American, for they are against the liberty of the individual in religious things, and, in so far as they are successful, form a union of the civil and ecclesiastical powers, which is contrary to the fundamental idea of this government. Behind whatever mask their purpose is concealed, the real object is the same in all — the enforced observance of Sunday as a religious institution by all the people. With such a law, and with no law to compel church attendance, the result will be a day of idleness on the part of most of the people, and of dissipation on the part of many. The evil of this will be so apparent to those who have been instrumental in securing such legislation that another step is quite likely to be suggested to them by the conditions themselves; and that step is compulsory church attendance. This was what the colonial governments found necessary when religion and the state were united in their day, and it will just as certainly be considered necessary if religion and the state are united in our day.

was an old man of sixty-two years; another was fifty-five years old. The State's attorney, who, in the interest of fanaticism, prosecuted these men with the same ferocity as a blood-hound would exhibit in attacking its victim, was constrained to admit that *aside from the crime charged, that of working on Sunday after they had religiously worshiped God on Saturday* (*their Sabbath*), *they were otherwise good citizens.* It will be noted that these men had not robbed their fellowmen, either legally or illegally; they were not extortioners; they were highly moral and exemplary citizens. Moreover, they were God-fearing men. They belonged to the little band of earnest believers in Christ, known as Seventh-day Adventists, a body of Christians who find in the Bible an injunction which they hold to be divine, requiring them to work six days in the week and to keep holy the seventh day, and who do not find any passage repealing this command in the Holy Scriptures. These sincere men worshiped God according to his word as they understood it, by keeping holy the Sabbath, or seventh day of the week. But they were poor men. Fifty-two days in the year were all the rest they could afford, if the wolf of want was to be kept from the door. Now, the Constitution of Tennessee declares that "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; . . . that no human authority can in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given to any religious establishment or mode of worship."

Spirit of the prosecution.

Adventists good citizens.

Adventists biblical Christians.

Constitutional provisions.

From this it would seem self-evident that any law which might operate so as to render it impossible for God-fearing citizens to support themselves and families without doing violence to their consciences by having to disobey what they believed to be God's imperative command, would be unconstitutional and consequently void; while it will appear equally evident that if any percentage of the population of Tennessee believe that God had commanded them to keep holy any day other than the first day of the week, to compel these persons to desist from work on the first day would be to compel poor people in the present fierce battle for livelihood to work on the day they believe holy, as to rest over one hundred days in the year would mean starvation to them and their loved ones. I do not see how any mind that is not blinded by bigotry can escape this conclusion. With this thought in mind, let us proceed.

Religious laws unconstitutional.

In Tennessee, as in many of our eastern States, there are ancient statutes, relics of a savage past, statutes which partake of the nature of the blue laws of colonial days. These enactments have for generations been practically obsolete. Hate, spite, and fanaticism have occasionally resurrected them; but constitutional guarantees, the enlightened sentiment of the age, and competent judges have usually rendered them of no effect. The law in Tennessee, which is of this nature, was an heir-loom from the theocracy of England, coming to

Sunday laws relics of bygone days.

Tennessee Sunday law.

Tennessee through North Carolina. It forbids any Sunday work, "except acts of real necessity" or "of charity," and prescribes a fine as punishment.[1] If the fine is not paid, the convicted party is to be imprisoned. Another statute declares that any one who maintains a nuisance may be fined one hundred dollars; while according to recent rulings of the State courts in Tennessee, a succession of such offenses as working on Sunday is a nuisance and is indictable.

Indictment of Adventists.

On May 27 the grand jury of Henry county indicted five farmers living on small places near the village of Springville, Tenn. The cases were tried in Paris before a certain Judge W. H. Swiggart. The prosecution did not attempt to prove that any one was disturbed by the work of these poor farmers; indeed, the witnesses for the State each declared

The fine imposed.

[1] But the real facts of the case are that the actual fine imposed was not the three dollar fine provided for by law, but was a seventy-five-dollar fine imposed without any authority of law however. This adds yet a deeper dye to the essential iniquity of the procedure throughout. The facts in the case are these: The Sunday law of Tennessee — the only Sunday law in the statutes of the State — provides only for prosecution before "any justice of the peace in the county" where the work is done; and then provides a penalty of "*three dollars*" only, "one half to the person who will sue for the same, the other half for the use of the county." This is the punishment, and the only punishment, provided in the statute forbidding the "doing or exercising any of the common avocations of life" "on Sunday." Nor is there any statute there making Sunday work a public or any other kind of "nuisance."

The law ignored.

Yet all this is ignored by the authorities of Tennessee, and their own will is set up and executed in place of any statute. Where the statute knows no such crime as "public nuisance" in connection with Sunday work, the authorities create such a crime, and prosecute these Seventh-day Adventists accordingly. Where the statute provides only for prosecution before any justice of the peace of the county, the authorities prosecute the Seventh-day Adventists before the circuit court of the State. Where the statute provides for a fine of three dollars only, the authorities lay upon Seventh-day Adventists any fine they choose. Where the statute makes no mention of any imprisonment, the authorities inflict upon these Seventh-day Adventists whatever imprisonment they please, in lieu of the fine which they have levied, if the fine is not paid.

Dictum of the court.

All this has been done again and again, and this without any statutory authority, but solely upon the authority of a statement of the Supreme Court of the State, that "Christianity is part of the common law of Tennessee." And this statement was made, and was adopted, and is thus enforced, in the face of the Constitution of that State, which declares "that no preference shall ever be given by law to any religious establishment or mode of worship;" and "no human authority can, in any case whatever, control or interfere with the rights of conscience." And the whole procedure, as there carried on, stands confirmed and specifically indorsed by the Circuit Court of the United States for the western district of Tennessee as "due process of law," and this, too, in spite of the statements by the same court in the same connection, that there is "not any foundation for the ruling" of the Supreme Court of Tennessee "that it is a common law nuisance to work in one's fields on Sunday;" that the man was "wrongfully convicted;" and that the State Supreme Court "wrongfully decided" when it confirmed his conviction by said ruling.

District court statements.

The truth, then, and the sum of this whole Tennessee procedure is that the only authority for it is a "ruling" of the State Supreme Court, for which there is "not any foundation" in rendering a "wrongful decision," confirming the "wrongful conviction" of a man for doing that which "is harmless in itself," namely, working on Sunday.

No actual disturbance occasioned.

that he was not disturbed. One of the prisoners had been seen plowing strawberries on Sunday, another cutting sprouts, and still another loading wood on a wagon. The accused did not employ counsel, but each made a simple statement of his case, relying upon the guarantee of the Constitution and the intelligence of the judge and jury for acquittal. The following is the statement made by Mr. W. S. Lowry, whose case came first:

Statement of the Adventist.

"I would like to say to the jury that, as has been stated, I am a Seventh-day Adventist. I observe the seventh day of the week as the Sabbath. I read my Bible, and my convictions on the Bible are that the seventh day of the week is the Sabbath, which comes on Saturday. I observe that day the best I know how. Then I claim the God-given right to six days of labor. I have a wife and four children, and it takes my labor six days to make a living. I go about my work quietly, do not make any unnecessary noise, but do my work as quietly as possible. It has been proved by the testimony of Mr. Fitch and Mr. Cox, who live around me, that they were not disturbed. Here I am before the court to answer for this right that I claim as a Christian. I am a law-abiding citizen, believing that we should obey the laws of the State; but whenever they conflict with my religious convictions and the Bible, I stand and choose to serve the law of my God rather than the laws of the State. I do not desire to cast any reflections upon the State, nor the officers and authorities executing the law. I leave the case with you."

Dependent on his daily labor.

Natural effects of the statement.

This simple, eloquent, and noble statement of a high-minded Christian gentleman would have made an impression on any mind not blinded by bigotry, and would have rendered just any heart not dwarfed and shriveled by religious fanaticism. But like the ill-fated Huguenots of the sixteenth century, these victims of religious prejudice lacked broad-minded, liberty-loving, and Constitution-revering patriots for judge and jurors. The prosecuting attorney struck the key-note of the true animus of the prosecution when, in closing his speech, he made use of the following significant expression:[1]

Inference of the prosecution.

"I cannot conceive that a man who claims to be a peaceable, law-abiding citizen can go on disregarding the day openly in the face of the law, openly in the face of the protections that are thrown around the holy Sabbath, *as we believe it and hold it*, and protected by the laws of this State; and this is a question that I presume you, gentlemen, will not have any difficulty in coming to a decision upon."[2]

Nature of the statute.

1 It is a pity that some one did not point out to this gentleman the impropriety of a lawyer seeking to disregard the Constitution of his State by arguing in behalf of a statute which essentially nullified a sacred guarantee; for it is clear that if these men were to save their families from starvation, they must disregard the State law in order to enjoy the religious freedom guaranteed by the State Constitution.

2 In striking contrast, says the protest sent out by the International Religious Liberty Association in its appeal to thoughtful Americans, are the following words of President Fairchild, of Oberlin College: "It is often urged that the right of private judgment, as now maintained, in reference to obedience to the laws of the land, will

Fine of prisoners.

The accused were promptly found guilty by the jury, and on refusing to pay the unjust fine,[1] were remanded to jail on June 3, where they remained for over forty days.[2] The sheriff had a higher conception of justice than the judge. He remarked to the latter that the convicted were "sincere in their belief." "*Let them educate their consciences by the laws of Tennessee*," exclaimed this judge, who had sworn to uphold that Constitution which declares that

A cruel judgment.

Provision of Constitution.

"No human authority can in any case whatever control or interfere with the rights of conscience," and that "no preference shall ever be given by law to any religious establishment or mode of worship."

Christians in the chain-gang.

After lying in jail for over forty days, three of these conscientious, upright citizens were taken out in the chain-gang with three negro criminals who had been sentenced for drunkenness, shooting in the street, and fighting the city marshal, and set to work on the public highway. What a humiliating spectacle to a justice and liberty-loving American! Three upright, noble-souled men, who, like the early Christians and the children of the Reformation, were loyal to the voice of conscience, were thus associated with depraved and brutalized criminals.

Repeated prosecutions.

The outrage might not call for such extended notice, were it not for the fact that in recent years in Tennessee and Arkansas these conscientious, Christian people, known as Adventists, have been systematically persecuted. The case above noted is only one of a number of similar instances where pure-hearted, Christian people have been cruelly persecuted for conscience' sake; and it would seem evident, from the system-

A Christian's argument.

subvert government, and introduce confusion and anarchy. . . . The danger, however, is greatly over-estimated. Government is never the gainer in the execution of a law that is manifestly unjust. . . . Conscientious men are not the enemies but the friends of any government but a tyranny. They are its strength, and not its weakness. Daniel, in Babylon, praying, contrary to the law, was the true friend and supporter of the government; while those who, in their pretended zeal for the law and the constitution, would strike down the good man, were its real enemies. It is only when government transcends its sphere that it comes in conflict with the consciences of men." Fairchild's "Moral Philosophy," pages 184, 185.

Fines not paid.

[1] The reason for not paying these fines is given by one of the victims, in the following language: "We did not pay our fines and costs, which amounted to about twenty-five dollars each, because we considered them unjust; and besides if we had paid them and returned to our work, we would have been re-arrested, and thus compelled to spend all the little property we own in paying fines."

Other Sunday work unmolested.

[2] While these men were in prison for conscience' sake, the following advertisement appeared in the official paper of Henry county, Tennessee: "On Sunday next there will be a basket picnic at Hollow Rock. The P. T. & A. Railway will give an excursion rate of fifty cents for the round trip from Paris. The train leaves Paris at 9.45 A. M., and returning, leaves Hollow Rock at 5.00 P. M." A further illustration of the real nature of this religious persecution will be found in the facts set forth in a letter written by one of the victims to a brother in Washington, D. C.: "While I am writing to you, it being Sunday, there is a train load of workmen passing in the streets not thirty feet from the jail, going out to work; and they have done so every Sunday since we have been here, and it apparently does not disturb any one. But if a poor Adventist takes his hoe out in his field and labors on Sunday, it disturbs the people for miles around."

atic prosecutions and the heartless ferocity with which these just and upright persons have been pursued, that they are victims of an organized effort, which has for its ultimate aim the securing of a series of judicial rulings calculated to further aid the determined effort being made to unite church and state and abridge the rights of American citizens. Against the infamy of these persecutions I wish to raise my voice in indignant protest. My whole soul revolts at the barbarism and ferocious savagery which seeks, by resurrecting obsolete laws, to re-enact in a measure the tragedies of the past, and which, through legal technicalities, ignore the constitutional guarantee of Tennessee. It is a shame, a crying shame, that such insane fanaticism, such anti-Christian intolerance, should flourish at this late day; and doubly shameful is it that our sense of justice and love of liberty are so benumbed by conventional hypocrisy that we do not, as a nation, rise up against such liberty-destroying inhumanity. To me there is nothing so terrible as the spectacle of just and upright men suffering as criminals. Think of that sixty-five-year old, silver-haired father, who had harmed no one, who had committed no crime, who had striven to follow the Golden Rule as a line of conduct for life, being driven in a chain-gang with hardened, brutalized negro criminals simply because of his sublime loyalty to what he conceived to be right. Think of this high-handed infamy, and remember that this crime against liberty, this crime against human rights, was perpetrated in the name of law, and instigated by persons who *impiously* claim to be Christians.

Spirit of the prosecutions.

Need for protest.

A shame to civilization.

A revolting thought.

The persecution of Jesus by the Pharisees of his day finds its parallel in the persecution of the Seventh-day Adventists by those who masquerade under his name to-day. And yet these same sleuth-hounds of bigotry call themselves Christians! Let us see how their actions square by the Golden Rule, which Jesus gave as the great basic principle of moral government.

A parallel to Christ's persecution.

Let us suppose that in Louisiana, for example, the Catholics, being numerically in the majority, should enact a statute that on certain days made holy by their church, all men must abstain from work "other than acts of real necessity." Let us suppose that Protestants refuse to keep these days; first, because they denied the right of the Church to canonize men or make holy days; and, secondly, because the fierce struggle for bread made it imperative that they work. Now let us further suppose that a number of the most upright citizens openly disregarded this unjust statute, and for this violation were dragged to prison, doomed to lie in jail, and finally put to work in New Orleans in the chain-gang with morally debased criminals. Would not there be a mighty uprising over the length and breadth of the land at such an unamerican and iniquitous enactment, which so clearly trampled on the right of conscience and disregarded the spirit of free government? "Whatsoever ye would that men should do to you, do ye even so to them." Jesus taught this as a cardinal truth, the sum of laws and precepts. Are persecutors of these Seventh-day Adventists Christians? —

Equivalent cases.

Persecutors not in reality Christians.

No, a thousand times, no! They are essentially pagan. Apollo-loving *Constantine*, and not the tolerant and ever-compassionate *Jesus*, is their model. But let us pursue this thought one step farther. Suppose that in Michigan, where the Seventh-day Adventists have some strength, they should be able to combine with the Hebrews, and were so disposed, and that through such a combination they were enabled to enact a law compelling all citizens of Michigan to rest on the seventh day. Would our Protestant and Catholic citizens peaceably acquiesce in such a statute? Would not our people call upon the Constitution to nullify such a wrong? Would we not hear on every hand that to compel people to keep Saturday would be equal to forcing a large per cent of them to do violence to their consciences by breaking Sunday, as a comparatively few could rest one hundred days in the year and yet earn a livelihood? And yet such a case would be exactly analogous to the persecutions now being carried on by persons who insult Jesus by calling themselves Christians. No, gentlemen, I grant you are the legitimate children of the holy (?) Inquisition, but your action will not square by the Golden Rule.

King pursued with relentless ferocity.

Poor Mr. King, of whom I have written before, was pursued with the relentless ferocity supposed to be characteristic of demons, until death came to his relief. He, and these new victims of religious intolerance belong to the chosen band of royal souls who in all ages have been persecuted for conscience' sake. Of that band Jesus was a conspicuous member. He broke the Sabbath as the Pharisees held it, and was pursued by the Sabbath Union in his day, even to the cross. The early Christians in the early days of Nero followed the dictates of their consciences, and for this were burned and torn to pieces. The noble spirits, yea, the chosen souls, of the Dark Ages, likewise followed the dictates of conscience, and for their splendid and sublime loyalty to what they conceived to be the truth, were burned, racked, and destroyed in a thousand different ways. Roger Williams followed the same guiding star of conscience in matters of religion, and as a result was banished from the Massachusetts colony. All of these persons are now popularly regarded as martyrs for truth, liberty, and right. The spirit manifested by their persecutors is abhorrent to all broad-minded and intellectually developed men and women. These last victims to the age-long spirit of intolerance hold the same position as was formerly occupied by the martyrs and heroes for conscience' sake, whose privations and heroic deaths form luminious examples of high thinking and noble acting amid the gloom of the past.

Persecution of Christ.

Persecution of Roger Williams.

Unnoticed by the press.

The secular press of the land, with many notable exceptions,[1] has paid little heed to these persecutions.

A decision unworthy the age.

[1] We here give some protests made editorially by leading papers. Few, however, of these papers have made the cause of the oppressed their own cause; while, on the other hand, the persecutors have relentlessly pursued their evil way.

"There can be but one opinion upon this decision among all liberal minded men. It is odious sophistry! unworthy of the age in which we live, and under it an Ameri-

Prevalent lethargy.

Indeed, a general lethargy seems to have overtaken our people and this is the most disheartening symptom present in the body politic at the present time. The day seems to have gone by when the cry of the oppressed or the weak arouses the sense of justice in the hearts of our people. Especially is it sad to see the religious press, supposed to represent the spirit of the Reformation (which struggled against such fearful persecutions of other days), now so silent when fellowmen are being ground between the millstones for conscience' sake. It is true that one of the greatest religious papers, the New York "Independent," has spoken grandly for freedom, as will be seen by the following extract:

Position of of the "Independent."

"We have again and again, during the last few years, had occasion to express our profound indignation at the administration of Tennessee law as applied to some country farmers belonging to the Seventh-day Adventist body, who, after having carefully kept the Sabbath on the seventh day of the week, worked in their fields on the first day of the

can citizen has been condemned to spend the rest of his days in a dungeon, unless he shall stoop to deny the dictates of his own conscience, and dishonor his own manhood." — *New York Commercial Advertiser.*

Christians have a legal right to work Sundays.

"The keeper of Saturday has an undoubted moral right to his convictions. More than this, his legal right to observe Saturday as a holy day and Sunday as a secular day, ought not to be called into question in free America by any civil authority. It would not be in doubt for a moment were it not for the existence of legal anachronisms that should have gone out with the witchcraft laws or, at the latest, with George the Third." — *Boston Daily Globe.*

Such persecution absolutely incredible.

"It seems absolutely incredible that in this age of enlightenment, in these free United States, men should suffer and families be plunged into sorrow because they have exercised a right of conscience guaranteed to them by the Constitution of their country. The sooner a test is appealed to the highest tribunal in the land for adjudication, the better for the honor of Tennessee and every State ridden by bad laws, passed in violation of individual liberty." — *Chicago Daily Globe.*

Made the offense a public nuisance.

"Not being able to leave his crops unworked for two days in the week, Mr. King plowed them on Sunday after having kept the Sabbath the day before. He was arrested under the Sunday law: and in order to make it effective against him, it was alleged that his work on his farm on Sunday created a public nuisance. On this entirely untenable ground he has been harassed from court to court. He was a poor man, but has been supported by the friends of religious liberty. Mr. King has been greatly wronged, but his only remedy at law is under the law and Constitution of Tennessee. It appears that for the present his remedy is denied him, and, this being the case, he has no better course than to submit to the oppression and go to prison — to the convict camp, if it suits the convenience of his persecutors to send him there." — *St. Louis Republic.*

Principle involved.

"The principle involved is simple, and its application plain. The State has nothing to do with religion, except to protect every citizen in his religious liberty. It has no more right to prescribe the religious observance of sabbaths and holy days than to order sacraments and to ordain creeds." — *New York World.*

Persecution.

"So long as the labor of Adventists on Sunday does not interfere with the rights of the Mosaic and Puritanic people on the same day, the prosecution of them seems neither more nor less than persecution." — *Chicago Tribune.*

Are we going backward?

"People are asking if we are returning to the days of Cotton Mather or the Spanish Inquisition, that faithful, law-abiding citizens must be fined or driven from the country when their only offense consists in quietly carrying out the convictions of conscience." — *Louisville Courier-Journal.*

Prosecution renewed.

week. This prosecution has been renewed, and three men of families, one fifty-five and another sixty-two years of age, were convicted, and have, during the summer and autumn, been working out their fine, being set to work with criminals at shoveling on the common highway. They refused to pay their fine, declaring that it was unjust, and that they were liable to be arrested again as soon as they were released. We have said before, and we say again, that this is bad law, bad morals, and bad religion."

Another religious organ, the Baptist "Church Bulletin," gives these suggestive words of warning:

Position of some Baptists.

"Let us be careful how we let in the camel's nose of religious legislation, lest the brute crowd his bulky form in, and occupy the whole shop. If the law by which these men were legally imprisoned be a righteous law, then may any State, nation, or country set up a religious creed and enforce it; then France treated properly the Huguenots; Russia, the Jews; and early New England and Virginia, the Baptists and Quakers. Protestant America had better be careful how she lays foundations for other men to build upon. Rome has as good a right to build in her way as we have to build in our way."

As a rule, however, the religious press has been strangely silent.

Poor policy.

A nation can sometimes afford to err on the side of mercy, but no nation can afford to be unjust to her lowliest citizen. I am one of those who believe most profoundly that every sin, whether committed by an individual, a State, or a nation, brings its own consequence as inevitably as the violation of a physical law brings its evil results. I believe that nations commit suicide no less than individuals, and that wrong done by nations will result in evil consequences: and believing this, while loving the great republic, I cannot remain silent when she is unjust or when she wrongs, in the name of law, upright citizens because they do not believe as the majority believe. No State or nation can afford to allow a law not based on justice to remain upon the statute books. And when our republic so far forgets the high ideals of justice, liberty, and human rights, which made her the flower of the ages, as to permit unjust laws to be passed, or cruel, obsolete statutes to be resuscitated in the interests of any class, any sect, or any religion, she makes law-breaking citizens, and plants in her own breast the seeds of disintegration.[1]

Vicious laws should be repealed.

Present tactics.

[1] After the occurrence of the shameful proceedings which called forth this justly merited condemnation, the grand jury of the same county (Henry county, Tennessee) summoned a score of witnesses, most of them members of the Seventh-day Adventist church at Springville, to testify against their brethren; and as a result ten or more were indicted for performing farm labor on their own premises on Sunday after observing the previous day as Sabbath.

Children compelled to testify.

Among the witnesses summoned were a number of children; so that children were compelled to testify against their parents and parents against their children. Inquiries were also made as to whether the women worked on Sunday, and what they did. Among those reported to be indicted was a feeble old man nearly eighty years of age.

Nor do these cases appear to be spasmodic, as some would have us think. Cases are multiplying instead of diminishing. Prosecution frequent.

On June 26, 1894, W. B. Capps was locked up in the county jail at Dresden, Weakley County, Tennessee, for performing common labor on his farm on the first day of the week, commonly called Sunday. The first time he was seen at work, he was cutting corn-stalks in his own field. The witness's farm is adjoining, and he could see Mr. Capps at work from his house a few hundred yards away. This was on a Sunday, in May, 1892.

In the fall of the same year the same witness went to Mr. Capps's house on Sunday to see him about a note on which he was surety, and found him plowing a piece of uncultivated land in the middle of a field of grown corn, in which he designed to sow turnips. The witness informed Mr. Capps that his father, the payee, expected him to send the money, though in his testimony the witness denied that he went to see the defendant about the note. This secluded spot in which Mr. Capps was quietly following the leadings of his conscience by tilling the soil on the first day of the week, was not only shut in by full-grown corn, but was three quarters of a mile from any public road. The case of Capps.

At another time Mr. Capps was seen on Sunday splitting rails. Before the day was over, two of his neighbors came along, took up the maul and ax, and assisted him for a time. The neighbors were not interfered with in their liberty.

Mr. Capps was arrested June 8, 1893, and at his trial before the Circuit Court of Weakley County, June 27, 1893, he was fined ten dollars and costs, amounting in all to fifty-one dollars and eighty cents. His case was appealed to the Supreme Court of Tennessee, which affirmed the judgment of the lower court, May 24, 1894, at Jackson, fixing the cost at fifty-eight dollars and sixty-five cents; making as a grand total the outrageous sum of one hundred and ten dollars and forty-five cents, to be served out by the convicted at the paltry rate of twenty-five cents per day. This will necessitate the confinement of the prisoner four hundred and forty-two days, or one year and nearly three months.

The Supreme Court did not write any opinion, but simply said: "There is no controversy as to the facts in this case [as of course there was not], and we find no error in the record; therefore the judgment of the court below will be affirmed." It gave no reasons, and did not attempt to meet the arguments raised by the defense. Decision of the court.

Mr. Capps had a wife twenty-four years of age, and four children, the eldest being only six years old, and one of them sick at the time of its father's imprisonment. His family was left all alone in the woods a quarter of a mile from any house. He was a poor man and unable to support his family during his confinement. He did not deny working on Sunday, but worked because he had rested the day before according to the Bible; because he recognized his God-given right to labor six days in the week, beginning on the first, as did his Creator; and because in acceding to the demands of the State to observe Sunday, he believed he would be denying his Lord.

Hence he refused to pay the fine and costs, regarding them as unjust, since the State was attempting to enforce upon him a dogma of religion, with which it could of right have nothing whatever to do. Therefore he went to jail.

VIEWS OF THE SEVENTH-DAY BAPTISTS.

"The Seventh-day Baptists believe that the Sabbath is purely a religious question, upon which legislatures should make no laws. They believe in absolute freedom of conscience as to what day should be kept, and would oppose legislation in favor of the seventh day as strongly as they do in the matter of the first. Religious liberty was the foundation principle upon which our government was built, and our brethren of other Protestant denominations are quick enough to see and recognize this whenever, for instance, the Roman Catholic Church tries to secure laws in its favor. Why can they not see the injustice of resorting to law to compel weaker denominations to keep Sunday?" "Sabbath Recorder," February 13, 1911. Should be no Sabbath laws.

GEORGIA.

The Georgia Sunday law makes the pursuit of one's business or ordinary calling on Sunday a misdemeanor, which is punishable by fine, imprisonment, and work in the chain-gang (see *ante* page 572); while the Constitution of the State declares that "no inhabitant of this State shall be molested in person or property . . . on account of his religious opinions." See *ante* page 529. Enforcement of the law, and disregard for the Constitution, have led to a number of prosecutions in the State, which, in reality, have been simply persecutions.

The law and Constitution in conflict.

SAMUEL MITCHEL.

First case of its kind.

One of the earliest cases, if not the earliest, in the United States of a Seventh-day Adventist being arrested and imprisoned for laboring on Sunday, was that of Mr. Samuel Mitchel. But it smacks as strongly of the persecuting spirit as do the more recent cases.

Mr. Mitchel was arrested in July, 1878, for plowing in his own field on Sunday, at Quitman, Brooks county, Georgia. For this he was sentenced to be confined in a loathsome prison cell for thirty days. Being in poor health, the confinement in a damp place taxed his physical powers beyond endurance, and after he had been in jail fifteen days, he was taken worse. A doctor was summoned, who told him to pay his fine and come out, to save his life. He replied that he owed the county nothing, as he had committed no offense against his fellow-citizens, and would not pay the fine. A gentleman who later became a member of Congress, offered to pay his fine if he would promise not to work any more on Sunday. This Mr. Mitchel would not do, but served out his time. As a result, his physical powers were broken, and he died February 4, 1879, a martyr to Sunday enforcement.

Taken sick in jail.

A martyr to Sunday enforcement.

Mr. Mitchel was regarded in the community in which he lived as a man of spotless integrity. Not the slightest charge was brought against his character except his allegiance to his convictions concerning the Sabbath. Even his persecutors admitted that he was "a good man;" but they said, "This Saturday-keeping must be stopped."

A good man.

As an illustration of Mr. Mitchel's prompt and faithful obedience to convictions of right and duty, the following incident in his life may be related: One Saturday, as he had often done before, he took a grist to mill, going a distance of about ten miles. As he entered the village, he learned that a Seventh-day Adventist minister was holding a meeting in the place. While waiting for his grist to be ground, he thought he would go over and hear what the stranger had to say. The subject of the discourse that day chanced to be the Sabbath, and as the claims of the fourth commandment and the teachings of Christ and his apostles were opened before his mind, he was convinced that the seventh day of the week is the true Sabbath, and at once decided

Prompt and cheerful obedience to God's law.

to obey. Instead of returning to the mill, he went directly home, leaving his grist till the next Monday; and from that day to the close of his life he faithfully observed the seventh day. There must be something wrong with laws and with legal proceedings which will treat such a man as a criminal. One who will render such prompt, willing, and cheerful obedience to the law of God, certainly would not knowingly or willfully disregard any proper or legitimate human law.

DAY CONKLIN.

Chopping wood on Sunday to keep family from suffering costs eighty-three dollars.

In March, 1889, Day Conklin, of Big Creek, Forsythe county, Georgia, was arrested, tried before a jury, and fined twenty-five dollars and costs, amounting in all to eighty-three dollars. The offense for which he was indicted was cutting wood near his own door on Sunday, November 18, 1888. He had no wood prepared for his stove at this time, and was chopping some to keep his family from suffering. He had conscientiously observed the seventh day as the Sabbath, believing it to be the day required by the fourth commandment to be kept holy.

In his plea before the jury in a similar case at Gainesville, Georgia, February 22, 1894, William F. Findley, prosecuting attorney, who was present at Mr. Conklin's trial, said regarding his case:

A most unrighteous conviction.

"One of these Seventh-day Adventists was tried over here in Forsythe county, and I think there never was a more unrighteous conviction. There was a man named Day Conklin, who was moving on Friday. He got his goods wet on Friday, and it turned off cold. On Saturday he went out and cut enough wood to keep his family from freezing. On Sunday he still hadn't his things dry, and it was still as cold as it had been on Saturday. He still cut enough wood to keep his family warm, and they convicted him for doing this. I say that that was an outrage, an unrighteous conviction, for he was doing the best he could. One of the jurymen told me that *they did not convict him for what he had done, but what he said he had a right to do.* He said he had a right to work on Sunday."

Others not molested.

That the prosecution in this case was simply the result of religious persecution is evident from the fact that others who did not observe the seventh day as the Sabbath, did the same kind of work on Sunday without being molested. One of the jurors who condemned Mr. Conklin, and one of the two witnesses against him, both chopped wood at their own homes on the very next Sunday after the trial, and some of the witnesses for the prosecution, both before and after the trial, traveled twenty-five miles with loads of farm produce on Sunday.

Lawyers give ten dollars each.

In charging the grand jury who found the indictment against Mr. Conklin, the judge said that if it were shown that women had been knitting on Sunday, a true bill should be found against them. When the judge fixed Mr. Conklin's fine, the two lawyers employed

as counsel for the defendant, each handed him ten dollars toward the discharge of it.

W. A. MC CUTCHEN AND E. C. KECK.

A minister prosecuted.

For completing preparations in a church building for a church school at Gainesville, Georgia, November 19, 1893, Mr. W. A. McCutchen, a Seventh-day Adventist minister, and Mr. Keck were arrested the same day, on the charge of "disorderly conduct." At their trial before the mayor's court, people living on the other side of the town testified that they had been *disturbed* by the work. Some of them said it was not the nature of the work that disturbed them, but that the doing of it *on Sunday* was the disturbing element. One acknowledged he was disturbed when he heard that they were working.

A mental disturbance.

Fifty-five dollars each or ninety days on streets.

Both men were promptly fined by the mayor fifty dollars and costs, amounting to fifty-five dollars in each case, or ninety days' work on the public streets of the city. This they refused to pay, and were locked up in the city jail. After being in jail half a day, friends secured their release on bail, they being bound over to await trial in the county court, on the charge of "Sabbath-breaking."

A travesty on justice.

The leading lawyers in the city stated that the mayor's action was a travesty on justice, since the mayor's court had absolutely no jurisdiction in the case — that whatever there was of it was a State offense, and not one against the city, as the city had no ordinance against Sunday labor; hence the charge of "disorderly conduct."

The mayor a Methodist.

The mayor was a leading member of the Methodist church of the place.

The county court threw the case back into the city court, where it was tried February 22, 1894, the jury, after considering it for seventeen hours, failing to agree.

Case dismissed.

August 23, 1894, the case was brought up again for trial, when it was dismissed on the ground that the labor performed was not in violation of the statute, as it was not in the line of their "ordinary callings," one being a minister and the other a teacher.

MISSOURI.

The following from the Oakland, California, "Daily Times," published in 1890, shows that Missouri is also included in this general campaign for the revival and enforcement of Sunday laws in this country. It also indicates who are the prime movers in it, and very significantly asks why seventh-day observers are specially singled out for attack:

"Until within a few years past there has been little or no attempt to enforce the Sunday laws on the statute books of the States of the Union. Practically, men have been free to labor if they chose, or to

travel on the first day of the week, as if there had been no Sunday law. But there has been a change. . . . Tennessee, Georgia, and Arkansas have inaugurated a persecuting enforcement of these laws against the Seventh-day Adventists, and now Missouri follows suit, and William Fritz and Robert Gibb, two Seventh-day Adventists, have been indicted and arrested for laboring on their farms on the first day of the week, after resting all day on the seventh, according to their understanding of the commandment. Who are the prime movers in this raid? and why are the Seventh-day Adventists singled out for attack?

Laws enforced on Sabbatarians.

"The answer to these questions is this: A National Sabbath Union has been formed within a few years, with the object of revivifying and enforcing the old Sunday laws and securing the enactment of new ones. Most of the religious denominations, if they have not indorsed this Sabbath Union, have taken no ground against it. The Seventh-day Adventists are a notable exception. On the broad ground of a complete separation between church and state, and not because they desire to have the observance of the seventh day (Saturday) enforced by law, they have vigorously opposed the National Sabbath Union. . . . The arrest of Seventh-day Adventists in four different States of the Union, not for dissipation, but for honest farm labor on Sunday, looks like an act of revenge, mean and contemptible beyond expression. The result to be hoped for is the repeal of these obnoxious laws."

The prime movers in revival of Sunday enforcement.

MARYLAND.

Article 36 of the Maryland Bill of Rights declares:

"That as it is the duty of every man to worship God in such a manner as he thinks most acceptable to him, *all persons are equally entitled to protection in their religious liberty; wherefore, no person ought, by any law, to be molested in his person or estate on account of his religious persuasion or profession, or for his religious practice,* unless, under the color of religion, he shall disturb the good order, peace, or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil, or religious rights."

Guarantee of religious freedom.

In plain and direct conflict with this constitutional guarantee of religious freedom, the State of Maryland has the following law prohibiting labor on "the Lord's day,"—a relic of the act of 1723, the first section of which made the third offense of speaking against the Trinity, or any person thereof, punishable by death, "without the benefit of the clergy" (see *ante* pages 46, 47, 514, 589):

Relic of 1723.

"No person whatsoever shall work on or do any bodily labor on the *Lord's day*, commonly called Sunday, and no person having children or servants shall command, or wittingly or willingly suffer any of them to do any manner of work or labor on *the Lord's day* (works of necessity and charity always excepted), nor shall suffer or permit

Observance of "Lord's day" required.

any children or servants to profane *the Lord's day* by gaming, fishing, fowling, hunting, or unlawful pastime or recreation; and every person transgressing this section and being thereof convicted before a justice of the peace, shall forfeit five dollars, to be applied to the use of the county."

Sabbatarians prosecuted.

Under this religious law, a number of prosecutions of conscientious observers of another day have taken place during recent years, which have been actuated evidently only by a spirit of religious persecution.

JOHN W. JUDEFIND.

A Methodist minister the complaining witness.

Warrant issued and served on Sunday.

Mr. Judefind, a member of the Seventh-day Adventist church of Rock Hall, Md., was arrested in Kent county, November 20, 1892, on the charge of husking corn out of the shock on Sunday. The complaining witness was the Rev. Mr. Rowe, pastor of the Methodist Episcopal church, Rock Hall. The minister was passing along the road thirty or forty rods away, and saw Mr. Judefind at work. Warrant was issued and served the same day (Sunday). The trial was set for the next day (Monday), and Mr. Judefind was convicted and sentenced to pay a fine of five dollars and costs. The case was appealed to the Circuit Court, and was tried at Chestertown, April 19, 1893, before Judge Stump and Judge Wicks. Mr. Ringgold, of the Baltimore bar, appeared as counsel for the defense, as he did also in the cases of Messrs. Baker, Bryan, and Marvel, which follow. The justice of the peace who issued the warrant and tried the case, was a witness in this trial, and testified that the warrant was not issued nor served on Sunday; but the defense proved by the constable who served it, that it was, which was contrary to law.

The court suspended judgment in the case at the time of trial, and Mr. Ringgold returned to Baltimore, expecting to be notified when the court was ready to render judgment in the case. He had also given notice that appeal would be taken in case the judgment was against the defendant. At the end of a week, Judge Wicks, in the absence of the counsel for the defense, delivered the opinion of the court, and committed the defendant to jail for thirty days. When Mr. Ringgold received notice of this fact, he went to Chestertown and applied for a writ of release for the defendant, pending the appeal; but the judges refused to sign the release, and Mr. Judefind had to serve his time out before the case was heard in the Court of Appeals, January 23, 1894. This court affirmed the judgment of the court below.

Thirty days in jail.

ISAAC BAKER.

Mr. Baker, an observer of the seventh day, was arrested April 11, 1893, and tried before Justice Phillips, of Queen Anne county, April 12, on the charge of plowing on Sunday. He was sentenced to pay a fine and cost amounting to eleven dollars. His case was ap-

pealed to the Circuit Court, and was tried at the October term. The judgment of the lower court was affirmed, and he was sent to jail, and served forty-three days. Some of the voluntary witnesses against him were members of the Methodist church, to which Mr. Baker had formerly belonged.

Forty-three days in jail.

MILTON A. BRYAN.

Mr. Bryan was arrested in June, 1893, in Queen Anne county, for chopping wood to cook dinner, and working in his garden, on Sunday. He was tried before a justice of the peace on the charge of Sabbath-breaking; was convicted, and fined five dollars and costs. An appeal to the Circuit Court resulting in the decision of the court below being affirmed, the defendant went to jail for failure to pay fine, and served forty days.

Forty days in jail.

GEORGE W. MARVEL.

Mr. Marvel, another observer of the seventh day, was arrested in Queen Anne county in June, 1893, and prosecuted for setting out tomato plants on Sunday, a work which occupied only a few minutes. The complaining witness against him was his own son, the constable who made the arrest, and who watched his father on Sunday to find something against him. Mr. Marvel was fined five dollars and costs. An appeal to the Circuit Court bringing no relief, the defendant was sent to jail. His son, however, paying the fine and costs, amounting to about twenty-six dollars, Mr. Marvel was released from jail after about an hour's confinement.

Son prosecutes father.

CHAS. O. FORD.

Mr. Ford was arrested in Queen Anne county June 5, 1893, and tried June 7, by Justice J. M. Aker, for labor done on Sunday, June 3. The defendant was fined five dollars and costs. The brother of the defendant, Mr. T. F. Ford, was the prosecuting witness, who had stated that he would prosecute the first Seventh-day Adventist he should see at work on Sunday; and this happened to be his brother. The case was appealed, but the brothers of the defendant paid the fine and costs before the date of trial. The offense of Mr. Ford was hauling some window sashes for the new Seventh-day Adventist church, from the steamer dock on Sunday, to prevent their being destroyed, threats to that effect having been made, and his own brother, the agent, having refused to put them in the freight-house, after promising to do so.

Brother prosecutes brother.

The judge who tried all these cases in Queen Anne county, made the statement publicly that if the Sunday law were to be generally enforced, he would rather be justice of the peace in that county than chief justice of the Supreme Court, as it would be a more lucrative position.

A lucrative business.

JOHN A. DODD.

Mr. Dodd was arrested in Queen Anne county, September 10, 1893, and brought before a justice of the peace the following day. The constable was the complaining witness. He had watched the defendant, and saw him at work at a boat landing, and made the charge before the justice, who without hearing the defendant, sentenced him to pay a fine of five dollars and costs. The justice said to the defendant: "You know the result of a former trial of some of your brethren. I impose the same fine and costs." The case was appealed to the Circuit Court, and tried at the November term. Mr. Dodd was acquitted. The "labor" done on Sunday by Mr. Dodd was holding horses for Mr. C. O. Ford, while he loaded the window sashes at the steamboat landing. The action of the constable and justice evidently was prompted by religious prejudice.

Acquitted.

JOSEPH WARRAM.

Mr. Warram was arrested in 1893 for Sunday work, and brought before the justice of the peace, where he waived examination, appealing to the Circuit Court. This being irregular, the case was dismissed.

EDGAR PRICE.

Mr. Price, of Millington, Kent county, was arrested May 22, 1893, for working in his barn on Sunday, May 21, about one mile from the town, and a considerable distance from any public road. The affidavit against him was made by a neighbor who came to his place to see what he was doing. This neighbor took supper with Mr. Price, and pretended friendship. He admitted publicly and otherwise that his church leaders put him up to betray Mr. Price.

A confessed inquisitor and betrayer.

Mr. Price waived hearing before the justice of the peace. He was indicted by the grand jury in October, and his case docketed for trial May, 1894, at Chestertown, at which time effort was made by the State to have him confess to doing wrong, and pay his fine; but without effect. The court finally dismissed the case, on the ground that the justice of the peace had exclusive jurisdiction in such cases, except on appeal.

Case dismissed.

H. O. BULLEN AND A. J. HOWARD.

Mr. Bullen and Mr. Howard were arrested Monday, May 20, 1894, at Shady Side, charged with doing "bodily labor on the Lord's day, commonly called Sunday." The work done by Mr. Howard was that of picking up a few scattered stakes about a churchyard, in the morning before breakfast, the entire time occupied in doing this being about two or three minutes. Mr. Bullen was out in his garden inspecting it on Sunday, the witness admitting that he did only about five minutes' work; but that was sufficient. At the same time, axes were to be heard all around the neighborhood. Even their

Only a few minutes' work.

informants were caring for their boats, bailing out water, drying sails, etc., preparing to amuse themselves on this same "Lord's day, commonly called Sunday."

An intolerant Methodist Sunday-school superintendent.

While on their way to the trial, the Methodist Sunday-school superintendent met the defendants, and stated that he would give one hundred dollars to get them both in the penitentiary for life, and that if they got justice, there's where they would go. They waived examination before the justice, and gave bail in the sum of one hundred dollars each for their appearance at court, October 3, 1894, at Annapolis. On appeal, the cases were dismissed for the same reasons given in the Price case.

An inquisitorial society.

A "Watchman's Association" was formed at Shady Side, to watch seventh-day observers on Sunday, with the avowed intention of getting them all in jail, or driving them from the country. Many threats were made, and warnings given them to leave the country. The door and transom of their meeting-house at this place were broken, and their worship was disturbed.

R. R. WHALEY.

R. R. Whaley, treasurer of the Seventh-day Adventist church at Church Hill, Queen Anne county, a carpenter by trade, was engaged to build a meeting-house for his society. On Sunday morning, June 3, 1894, he worked in his garden. A neighbor became offended at the sight, though before making a profession of religion Mr. Whaley had often worked in his garden on Sunday, and sometimes cut enough wood on that day to last the rest of the week, without protest. Evidently, therefore, Mr. Whaley's real crime was in becoming an Adventist. This neighbor hunted around town for an officer to have Mr. Whaley arrested immediately. To the credit of one officer, be it said, he refused to have anything to do with the matter. But four days later, June 7, Mr. Whaley was arrested, and fined five dollars and costs. The case was appealed to the Circuit Court.

His real crime, his religion.

Mr. Whaley was again arrested, June 18, for chopping wood on Sunday, June 10 and 17. The witnesses against him were watching to see if he would work. It was admitted on all sides that others in the community, not Seventh-day Adventists, chopped wood and did various kinds of work on Sunday, and were not molested or complained of. In fact, a near neighbor of Mr. Whaley's was chopping wood on Sunday at the same time he was, but without protest. Mr. Whaley was convicted, and twice imprisoned for one month.

Others not molested.

W. G. CURLETT.

Mr. Curlett was arrested June 15, 1894, at Church Hill, Queen Anne county, for working in his garden on Sunday, June 3 and 10. His home is three miles from town, and in the woods. Persons knowing him to be a Seventh-day Adventist, came by and saw him at work. He was brought before the magistrate and found guilty on

A false charge.

the two counts, although the first charge was false. The witness swore he saw him at work between eight and nine o'clock the morning of June 3, when, as a matter of fact, Mr. Curlett was in bed until about four o'clock P. M. that day, being sick. He was fined five dollars and costs, in default of which he, a poor man, was taken from a wife and a number of small children greatly in need of his assistance and care, and imprisoned for thirty days.

THE RECORD FOR TWO YEARS.

Seventy-six cases.

Jail and chain-gang service.

During 1895 and 1896, no less than seventy-six Seventh-day Adventists were prosecuted in the United States and Canada under existing Sunday laws. Of these, twenty-eight served terms of various lengths in jails, chain-gang, etc., aggregating 1,144 days, or nearly three and one-half years for a single person, as shown by the following:

IMPRISONMENTS SUFFERED BY SABBATARIANS IN 1895 AND 1896.

NAME.	DAYS IMPRISONED.		PLACE.
A. Cathay	54	In chain-gang.	Dayton, Tenn.
H. C. Leach	54	"	" "
B. Terry	54	"	" "
D. Plumb	54	"	" "
W. J. Kerr	55	"	" "
M. Morgan	55	"	" "
C. B. Moyers	53	"	" "
W. S. Burchard	54	"	" "
J. M. Hall	55	"	" "
G. W. Colcord	34		" "
M. C. Sturdevant	34		" "
W. S. Burchard	34		" "
D. C. Plumb	34		" "
E. S. Abbott	34		" "
I. C. Colcord	18		" "
H. Burchard	18		" "
W. J. Kerr	18		" "
W. Wolf	18		" "
R. R. Whaley	30		Church Hill, Md.
R. R. Whaley	28		" " "
J. W. Beall	5		Fresno, Cal.
J. W. Lewis	129		Tiptonville, Tenn.
W. S. Lowry	28		" "
J. H. Dowdy	28		" "
O. Wilson	28		" "
C. A. Gordon	14		Little Rock, Ark.
Mrs. C. A. Gordon	14		" " "
P. M. Howe	40		Chatham, Ont., Canada
W. Simpson	40		" " "
J. Mathews	28		" " "
Total	1,144		

Others were fined, while a few were acquitted or had the good fortune of having their cases dismissed. A number of those in Tennessee, after being in jail for thirty-four days, were pardoned by the governor.

SOUTH CAROLINA.

THE STRAWBERRY CASE.

Sunday laws have demonstrated in numerous instances that they are more readily adaptable to the uses of the intolerant bigot than to the true service of the Redeemer's kingdom. A case in point occurred in Greenville, South Carolina, in 1909. A family of conscientious Christians who observe as the Sabbath the day specified in the fourth commandment had moved from Montana to South Carolina, and settled near Greenville. They had procured a few acres of land and through economy and diligent effort, were doing what they could to make a living by raising fruit for the market.

A weapon for the bigot.

Though strictly observing the seventh day of the week, they endeavored to avoid annoying their neighbors, by refraining, as far as possible, from doing any noisy work on Sunday. Their Christian conduct won for them the confidence, friendship, and respect of all their neighbors except one, whose objection to them seemed to be based more upon their strict observance of the Bible Sabbath than upon their Sunday work, inasmuch as he had made no complaint of his other neighbors who had occasionally worked on Sunday.

Exemplary citizens.

After hounding these Christians for some time, threatening them repeatedly with arrest, and spying upon them for the purpose of catching them at work on Sunday, this bigoted neighbor finally swore out a warrant for their arrest and for the arrest of several other members of the same faith, one at least of whom was not even on the place at the time specified in the warrant. The persons complained of were Mr. and Mrs. Sullivan Wareham, Benton Wareham, their fourteen-year-old son, Laura Darnell, Cannie Darnell, and four other seventh-day-keeping Christians, all of whom were accused of the crime(?) of picking strawberries on Sunday, May 2, 1909, "against the peace and dignity of the State of South Carolina."

The spying neighbor.

The trial was set for August 3, at 9:30 A. M., and a crowded court room was the result of the publicity given the case, on account of the fact that peaceable men and women, conscientious Christians, were to go on trial for their faith, through the invoking of an unjust law by a prejudiced and bigoted neighbor. Two of the accused were children under fourteen, and, as the Sunday law of South Carolina exempts children under that age, they were excused by the magistrate.

On trial for their faith.

The animus of the prosecution was demonstrated both in the demeanor of the plaintiff and in the testimony of the accusing witnesses. Several times the magistrate found it necessary to reprimand the plaintiff for the kind of language he employed. One of the parties whom the witnesses swore they saw picking berries was shown to have been more than one hundred fifty miles away at the time. One of the witnesses who swore he saw the accused picking berries was a quarter of a mile away, and on the opposite side of a hill.

The animus of the prosecutor.

Religious discussion debarred on a religious question.

The magistrate took occasion to instruct those who were to make the pleas that they were not to discuss any theological or religious question to determine which day of the week is the Sabbath, stating that the law of the State had decided which day was to be observed; and yet, as pointed out by Mr. K. C. Russell, who made the plea for the accused, the whole case was based upon religion. If religion had not been involved in it, there would have been no case to try. The "crime" with which the defendants were charged was "Sabbath-breaking," and there is no legitimate authority for Sabbath-keeping save the Word of God, the great fountain of religion. In his plea, Mr. Russell showed that the enforcement of Sunday laws upon those who observe the seventh day of the week was entirely out of harmony with the Fourteenth Amendment to the United States Constitution, which says: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It was further shown that the enforcement of Sunday laws upon Christians who observe another day of the week placed upon them a tax of one-sixth of their earning capacity, not for the support of their own religion, nor for the support of any legitimate function of government, but for the purpose of having them show deference to the religious customs or practices of others, for which taxation they could receive no possible adequate recompense. This was a palpable injustice, and all legislation making it possible was, beyond question, class legislation, the pernicious influence of which is frequently demonstrated, as in this case, through prejudice or tyrannical zeal. Religious legislation invariably puts a dangerous weapon into the hands of bigots, from whose blows better men — and women — suffer.

An infraction of the fourteenth amendment.

An unwarranted tax.

Class legislation.

A dangerous weapon.

After the plea, the magistrate read a short charge to the jury, who, after being out for half an hour, returned a verdict of *not guilty*, which met with general approval on the part of the townspeople. The case is valuable as a demonstration of the dangerous nature of all such laws. The work complained of was of the most inoffensive character, and the people accused of doing it were admitted to be, in every sense, most exemplary citizens. But this Sunday law made it possible for a prejudiced individual to hale into court those who were guilty of no real wrong, and, in case the jury had found for the plaintiff, he could have numbered among the criminal class the most unblemished members of the community, and doubtless kept up his nefarious work. One such case as this ought to be sufficient to demonstrate the iniquity of all Sunday legislation.

Not guilty.

A sufficient object lesson.

Editorial comment of the Washington "Post."

Commenting on this case under the caption, "A Matter of Conscience," the Washington "Post" of August 19, 1909, said:

"A few days ago a thoroughly orthodox Christian in one of the Southern States found five members of the Adventist faith working in the field a Sunday. Deeply imbued with the gloomy faith of a John Balfour of Burley, this excellent and exemplary man, just from the sanctuary, where he worshiped in the name of Him who sat at

meat with publicans and sinner and plucked green corn a Sunday — this child of orthodoxy and cruelty swore out a warrant, and had the five arrested for breaking the Sabbath.

"The jury was composed of enlightened men, and the accused were acquitted on the plea that they kept one day of the week holy, a Saturday. And such is orthodoxy, that argues by the stake, the fagot, and the torch. This paper is not a sectarian, though it is a Christian, and as an observer of men, things, and events, it is ready to say that as few criminals, male and female, are recruited from the Adventists as from any other sect, numbers computed.

Character of people accused.

"They work Sundays, but they keep Saturdays, and that fulfills the law of God, as it should of man. These folk are earnest, sincere Christian men, women, and children. They may be wrong in faith, desperately wrong. That is a matter of conscience; but their consciences are about as likely to be right as yours or ours.

A matter of conscience.

'Leave thought unfettered every creed to scan,'

and take care of your own conscience. That will keep you busy without meddling with the consciences of other people."

VIRGINIA.

PREJUDICE NULLIFIES AN EXEMPTION CLAUSE

The Sunday law of Virginia, while imposing a fine of "not less than five dollars" upon any one "found laboring at any trade or calling" "on a Sabbath," contains a very plainly worded exemption for observers of the seventh day. Section 3800 of the code provides that "any person who conscientiously believes that the seventh day of the week ought to be observed as a Sabbath, and actually refrains from all secular business and labor on that day," shall not be liable to the penalties prescribed in the preceding section imposing the fine.

Sabbatarians exempted.

Such a provision, it would seem, ought to guarantee any conscientious observer of the seventh day against molestation for doing ordinary labor on Sunday, if such guarantee can exist where Sunday laws exist; but that it does not always do so was strikingly illustrated by an incident which occurred at Colonial Beach, in October, 1910.

Exemption not a sure guarantee.

Mr. Eugene Ford, a Christian observer of the seventh day, was requested by his employer, an observer of Sunday, to do a small job of work for him on Sunday, October 10,— repairing some dredging machines which had been left at his shop for that purpose. The owners of the machines called for them on Sunday; but little work was required to complete the repairs, and Mr. Ford was asked to do it, notwithstanding it was Sunday. He did the work, and the machines were taken away. There were involved in the transaction the owners of the machines, the driver of the dray, the employer (Mr. Staples), and Mr. Ford. All were nominal observers of Sunday except the last named, who, having conscientiously observed as Sabbath the previous day, considered himself at liberty to work on Sunday.

A case in point.

Living in the place, however, was one whose ideas of liberty and justice seemed tinctured with religious prejudice. This man, though a professed observer of Sunday and a teacher in a Methodist Sunday-school, had, during the summer, it was alleged by neighbors, sold and delivered crab meat and gasoline on Sunday. Nevertheless, having learned that Mr. Ford had been working on Sunday, he swore out a warrant for his arrest for violation of the Sunday law. The latter was tried before the mayor of the town, and fined two dollars and costs, the amount prescribed by the law previous to its amendment in 1908. (See page 641.) This Mr. Ford refused to pay, and appealed to the county court. His employer, however, came forward and paid the fine, and the case was dismissed.

The bigot at work.

It should be noted that, although several others were involved in this transaction, no one was arrested save this observer of the seventh day; that the prosecutor himself (a Mr. Ernest Ford, though no relative) had violated the law earlier in the season, and this without any warrant of an exemption to cover his case; that the same law imposing the fine, exempted observers of another day; and lastly, that the prosecutor admitted that he would not cause the arrest of any one for Sunday work except an observer of the seventh day; — all of which demonstrates anew the fact that religious liberty cannot be guaranteed in any land where religion or religious observances are made matters of law. All such laws should be repealed.

Only the Sabbatarian arrested.

OFFICER RESIGNS RATHER THAN ENFORCE LAW.

In June, 1909, Chief Burgess Harvey, of Lansdale, Pa., tendered his resignation to the town council, as chief burgess, rather than enforce the Sunday blue-laws of that State. His letter of resignation, published in the Danville (Va.) "Bee," of June 21, 1909, reads:

"Gentlemen: I hereby tender my resignation as chief burgess of the borough of Lansdale, the same to take effect upon the appointment of my successor. I take this action only after very careful consideration of a petition placed in my hands, signed by various voters, women, and children, praying me to enforce what is commonly called the blue-laws.

Officer resigns.

"Since issuing a proclamation dated June 16, 1909, calling for a limited enforcement of the law, I have been reliably informed that every ice-cream parlor and soda-water fountain, fruit and candy counter must be closed on the Sabbath if the law is to be consistently administered. That is a task I am unwilling to undertake, and was not contemplated by me when I asked the support of the votes for the office. Hence I step aside very cheerfully, I assure you, to make room for any one who feels equal to the emergency.

Reason for resigning.

"While I believe in keeping the Sabbath as a day of worship and rest, I cannot persuade myself that it is a part of my duty as a good citizen to hold an office where I am expected to prosecute citizens who may differ from me in that particular."

PART VII.

Sunday Laws Before the Bar of Reason.

Why Sunday Laws Are Wanted.

"Give us good Sunday laws, well enforced by men in local authority, and our churches will be full of worshipers, and our young men and women will be attracted to the divine service. A mighty combination of the churches of the United States could win from Congress, the State Legislatures, and municipal councils, all legislation essential to this splendid result."—*Rev. S. V. Leech, D. D., in Homiletic Review for November, 1892.*

Who Responsible for Them.

"During nearly all our American history the churches have influenced the States to make and improve Sabbath laws."—*Rev. W. F. Crafts, in "Christian Statesman," July 3, 1890.*

Religion an Essential.

"A weekly day of rest has never been permanently secured in any land except on the basis of religious obligation. Take the religion out and you take the rest out."—*Rev. W. F. Crafts, in "Hearing on Sunday Rest Bill," December 13, 1888, page 21.*

"The experience of centuries shows that you will in vain endeavor to preserve Sunday as a day of rest, unless you preserve it as a day of worship."—*Dr. Joseph Cook, in Boston Monday Lectures, in 1887.*

SUNDAY LAWS BEFORE THE BAR OF REASON.

"BACKWARD STATES."[1]

Attention having been called to the fact that in various States conscientious observers of the seventh day had been persecuted under Sunday laws, Rev. W. F. Crafts, superintendent of the International Reform Bureau, of Washington, D. C., and a noted champion of Sunday legislation, in a communication to the Washington "Post," of April 3, 1905, admitted that the enforcement of these laws had resulted thus in certain States which he called "backward States."

Persecuting States backward States.

The logical result of all legislation of a religious character must, in the end, be persecution upon those who refuse to yield to the demands of the law. It is this very kind of legislation that will turn the States "backward" to the days of religious intolerance. James Madison, speaking against an establishment of religion by civil government, clearly stated the danger that lies in the first attempt, however slight. He said: "Distant as it may be in its present form from the Inquisition, it differs from it only in degree. The one is the first step, the other is the last, in the career of intolerance."

Logical results of religious legislation.

From these statements it will be seen that any State which attempts to enforce upon its citizens any religious dogma is a "backward State," and that such attempts will, in the end, lead to all the baneful fruits of the Inquisition.

The following syllogism will illustrate the logic of this "backward State" argument: —

States having Sunday laws backward States.

Major premise: States which persecute those who work on Sunday are "backward States."

Minor premise: The States which persecute those who work on Sunday are States that have Sunday laws.

Conclusion: Therefore all the States that have Sunday laws are "backward States."

Because all the States which have Sunday laws have not oppressed the observers of the seventh day, and so demonstrated themselves to be, in this respect, "backward States," is either because opportunities for doing so have not presented themselves, or because such persons are exempt from the provisions of the laws referred to, or else because the laws have not been enforced, and not because the logic of Sunday legislation does not lead to such results.

Seventeen States have persecuted Sabbatarians.

It is a fact, however, that no less than seventeen out of the forty-eight States in the United States having Sunday laws have actually prosecuted conscientious observers of the seventh day.[2] These States are Alabama, California, Georgia, Maryland, Michigan, North Caro-

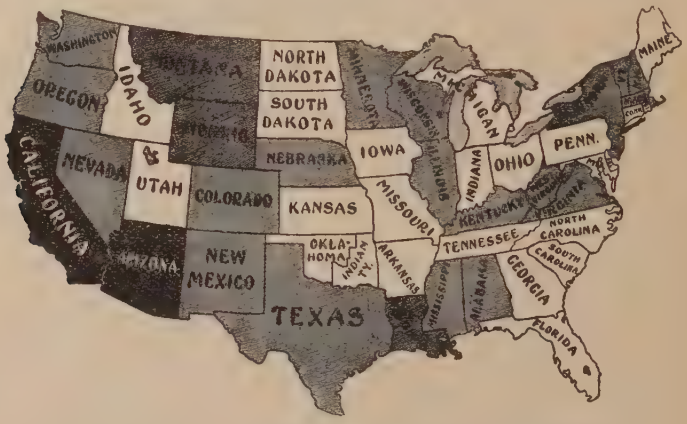
[1] "Religious Liberty Leaflet," No. 12, by K. C. Russell.
[2] This count includes New Mexico and Arizona as States.

A prolific source of persecution.

lina, South Carolina, Pennsylvania, Arkansas, Florida, Illinois, Massachusetts, Mississippi, Ohio, Tennessee, Virginia, and Texas. Sunday laws are a prolific source of religious persecution, as is evidenced by the fact that from 1885 to 1896, as the result of their enforcement, over one hundred Seventh-day Adventists in the United States, and about thirty in foreign countries, were prosecuted for quiet work performed on the first day of the week, resulting in fines and costs amounting to $2,269.69, and imprisonments totaling 1,438 days, and 455 days served in chain-gangs.

How far back?

But the question naturally arises, How far back will Sunday legislation lead a State? To what lengths will the logic of such legislation carry civil government? When a State starts on this road, where will it end? It would be absurd, indeed, to imagine a State having



SUNDAY LAWS AS REPRESENTED BY NATIONAL REFORMERS.

In a work recently published by the National Reform Association, the States having rigid Sunday laws are represented in white; those having less stringent laws, in shading; and the one State and one Territory having no Sunday law, in black, as above.

a law without a penalty. Such a thing would be a misnomer. Senator Blair once said, "A law without a penalty is only an opinion." The penalty for the first offense in the violation of any law might be a light one; but should there be a continued disregard of the law, it would ultimately become necessary, in preserving the dignity of the State, to increase the penalty until the law becomes effective in compelling obedience. This is a recognized principle in all law and jurisprudence.

The increment of penalties.

It can readily be seen that if the offending person continues to violate the law, the severity of the penalty must increase, until the only remedy for a determined and willful disregard of the State would

logically be the death penalty. Speaking on this point, Gibbon, the historian, says: "It is incumbent on the authors of persecution previously to reflect whether they are determined to support it in the last extreme. They excite the flame which they strive to extinguish; and it soon becomes necessary to chastise the contumacy, as well as the crime of the offender. The fine which he is unable or unwilling to discharge, exposes his person to the severities of the law; and his contempt of lighter penalties suggests the use and propriety of *capital punishment.*" "Decline and Fall of the Roman Empire," chapter 37, paragraph 23.

Logic of taking first step.

It was Sunday legislation which plunged Europe into the dark ages and the Inquisition. And this is where it will lead the world again to-day if it starts once more on this "backward" road.

SUNDAY LAWS CORRECTLY REPRESENTED.

This map represents in white the one State and one Territory having no Sunday law; in shading, those which have mild Sunday laws; and in black, those which have more stringent Sunday laws. It will be noticed that the map is nearly all black or shaded.

Already forty-seven of the forty-eight States in the Union have Sunday laws, and are, therefore, "backward States;" and strenuous attempts are being made to swing the one remaining State not having a Sunday law into line.

Forty-seven States have Sunday laws.

The one great object of the National Reform Association, the International Reform Bureau, the American Sabbath Union, the Church Federation, and all other like organizations, is to secure religious legislation, not only in the States, but in the national government as well. Their work does not stop with an attempt to swing all the States "backward," but they are also seeking to turn this nation

Church and state organizations.

"backward" by bringing about a union of church and state in this country. Work of this kind is being systematically carried on at the nation's capital in bringing influence and pressure to bear upon legislators with the hope of securing a national Sunday law that will give effect to the State Sunday laws.

A veritable image.

It is easy to see that when these religio-political reformers succeed in securing that for which they are so earnestly seeking, we shall have then erected in this country — "the land of the free and the home of the brave" — a veritable image to the religious establishment and ecclesiastical tyranny which existed in Europe in the dark ages.

What the fathers saw.

Those who so nobly stood for freedom in the early days of this country, saw that this would be the result if such principles were carried to their logical outcome. This is shown by the memorial of the Presbytery of Hanover, in 1776, addressed to the general assembly of Virginia. It states that a civil magistrate cannot attempt to adjudge the right of preference among the various sects that profess the Christian faith without erecting a "chair of infallibility," which, it says, "would lead us back to the church of Rome." Thus we see that the result of the movement represented by these so-called reform organizations will be to turn this nation "backward."

While we agree with the statement that the States which persecute those who in their religious practise may not be in accord with the majority, are "backward States," we cannot agree with Dr. R. C. Wylie, another prominent National Reformer and champion of Sunday legislation, in his representation of the Sunday laws in the United States. In his book on Sabbath laws in the United States, by means of a map of the United States, he represents the States having the most rigid Sunday laws, in pure and spotless white; those having Sunday laws "weakened by exemptions" and the like, in shading; and the States that have no Sunday laws, in black, as shown in the first of the accompanying cuts.

Which States are black?

This is indeed a most forcible illustration of the following words of inspiration: "Woe unto them that . . . put darkness for light, and light for darkness" (Isa. 5:20); for, as we have seen, all States which have Sunday laws are "backward States," and hence should be represented by black, and not white. History denominates as the "dark ages" the days of which these "backward States" are symbols. So it would seem much more appropriate to represent in black the States having Sunday laws, and those having no Sunday law, in spotless white, as in the second illustration.

Human in place of divine.

The making of Sunday laws is a substitution of the laws of men for the law of God, the exaltation by merely human authority of Sunday in the place of the Bible Sabbath. It is a matter of no little moment that this substitution has become so well-nigh universal, not only in the Old World, but in America, the boasted land of liberty.

Is the whole world, America included, to be enveloped once more in darkness? Is religious bigotry to find a foothold in every nation, and to entrench itself behind the laws of every land?

It is high time that every loyal statesman and every Christian patriot should awaken and firmly take his stand against the encroachments that are being made upon the honor of the American nation and the commonwealths of this land by the zealous but misguided men who are seeking to turn this country "backward" to the darkness, superstition, and intolerance of mediæval times.

ALEXANDER CAMPBELL ON SUNDAY ENFORCEMENT.

No warrant in Scripture.

There is not a precept in the New Testament to compel, by civil law, any man who is not a Christian to pay any regard to the Lord's day, more than to any other day.

Therefore to compel a man who is not a Christian to pay any regard to the Lord's day, more than any other day, is without the authority of the Christian religion.

Faith an essential to the performance of Christian duty.

The gospel commands no duty which can be performed without faith in God. "Whatsoever is not of faith is sin." But to compel men destitute of faith to observe any Christian institution, such as the Lord's day, is commanding a duty to be performed without faith in God.

Therefore to command unbelievers, or natural men, to observe in any sense the Lord's day, is antievangelical, or contrary to the gospel.[1]

SPURGEON ON SUNDAY LEGISLATION.

Christ wants no help from Cæsar.

I am ashamed of some Christians because they have so much dependence on Parliament and the law of the land. Much good may Parliament ever do to true religion, except by mistake! As to getting the law of the land to touch our religion, we earnestly cry, "Hands off! leave us alone!" Your Sunday bills and all other forms of act-of-Parliament religion seem to me to be all wrong. Give us a fair field and no favor, and our faith has no cause to fear. Christ wants no help from Cæsar. I should be afraid to borrow help from government; it would look to me as if I rested on an arm of flesh, instead of depending on the living God. Let the Lord's day be respected by all means, and may the day soon come when every shop shall be closed on the Sabbath, but let it be by the force of conviction, and not by the force of the policeman; let true religion triumph by the power of God in men's hearts, and not by the power of fines and imprisonments.

[1] "Memoirs of Alexander Campbell," volume i, page 528.

WHY SUNDAY LAWS ARE WRONG.

1. Because Sunday, as a day of rest, is a religious institution.

Because religious.

2. Because legislation in reference to a religious institution is religious legislation, and the passing of such laws is a long step toward the union of church and state.

3. Because, as James Madison says, "there is not a shadow of right in the general government to intermeddle with religion. Its least interference with it would be a most flagrant usurpation."

4. Because, as expressed in the protest which gave rise to Protestantism, "in matters of conscience the majority has no power."

5. Because Sunday laws mean enforced idleness, and idleness fosters intemperance, vice, and all other crimes.

Not temperance measures.

6. Because, while frequently urged as temperance and other reform measures, their real and ultimate object is the compulsory observance of the day.

They enslave rather than free men.

7. Because, although professedly in the interest of the laboring man, such laws really enslave all labor. The assumption of the right to forbid honest labor on one day of the week involves the right to forbid or control it on any or all days of the week.

8. Because, as Neander informs us, they were the means through which church and state were united in the fourth century, and instead of preserving the Roman empire, they contributed largely to its downfall.

9. Because they interfere with the religious freedom even of those who regard Sunday as the Lord's day.

Make hypocrites.

10. Because their whole tendency is to make men hypocrites instead of Christians.

11. Because they are both un-American and un-Christian.

12. Because they require that men should render to Cæsar that which belongs to God.

Religious duty can be directed only by reason and conviction.

13. Because, as stated in the Memorial of the Presbytery of Hanover to the Virginia General Assembly in 1776, "the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and is nowhere cognizable but at the tribunal of the universal Judge."

14. Because "in matters of religion no man's right is abridged by the institutions of civil society," and "religion is wholly exempt from its cognizance."

15. Because it is the very genius of Christianity to grant to every man the right to believe in the gospel or not to believe it, to obey the divine law or not to obey it; and what the Author of Christianity has granted, no authority has the right to abridge or take away.

A violation of the Constitution.

16. Because they are a violation of that just principle and inhibition of our national Constitution against the passage of any law establishing religion or prohibiting the free exercise thereof.

17. Because they deprive a considerable and respectable portion of the Christian community — the observers of the seventh day — of one sixth of their rightful working time.

18. Because they make criminals of a class of citizens against whom no criminal charge ought to lie.

19. Because they make criminal on Sunday acts which on any other day of the week are considered perfectly lawful and right. Honest toil and innocent recreation and amusement, while not consistent with proper Sabbath observance, are not crimes on any day. Crimes are not determined by the day of the week upon which they were committed. Make criminal that which is not crime.

20. Because they withhold from one class of citizens what they freely permit to another,— the right to six days' work,— simply because of a difference in religious belief.

21. Because the penalizing of religious belief and inoffensive religious practice is no part of the business of the state.

22. Because the power that makes a law is the only power authorized to compel its enforcement. One State or one nation never enforces the laws of another State or another nation. Should it attempt to do so, the act would be a plain implication that the other power was unable to enforce its own laws, and therefore was non-existent as a governing institution. When, therefore, a demand is made that the state enforce the law of God, it is a plain implication that the Ruler of the universe is unable to enforce his own laws, and that his government is non-existent. This attempt of human government to strengthen, defend, and enforce the decrees of divine government is not merely the most ridiculous of absurdities, but is positively blasphemous when its import is fully understood. Uzzah's attempt to steady the ark of God was of the same nature. The ark of God contained the law of God, the symbol of God's government. Uzzah thought that unless supported by his hand, it must fall. God in his dealing with Uzzah, taught the world a lesson which never ought to need a repetition. The incidents recorded in the third and sixth chapters of Daniel, in another way, teach the same lesson. An insult to Deity.

23. Because, as stated in the Sunday Mail Reports adopted by Congress in 1829 and 1830, they are an attempt to settle a religious controversy — the question of which day is the Sabbath — by law. An attempt to settle a religious controversy.

24. Because Sunday laws are contrary to the principles of the gospel and of good government, and are in direct conflict with the law of God They enforce a rival to the Sabbath appointed by Jehovah. If it is wrong for the state to enter the domain of religion and require the sabbatical observance of the day divinely appointed, it cannot be right for it to enter this domain and enforce the sabbatical observance of a day not thus appointed. In conflict with the law of God.

25. Because they are convenient tools for the inquisitor, and are persecuting in character. They imply that certain men have a right Convenient tools for persecution.

not only to interpret God's law for their fellow-men, but to execute vengeance upon those whom they pronounce transgressors of that law. The Sunday Mail Reports adopted by Congress in 1829 and 1830 spoke correctly against such laws when they said: "Among all the religious persecutions with which almost every page of modern history is stained, no victim ever suffered but for the violation of what government denominated the law of God." "If a solemn act of legislation shall, in *one* point, define the law of God, or point out to the citizen *one* religious duty, it may, with equal propriety, proceed to define *every* part of divine revelation, and enforce *every* religious obligation, even to the forms and ceremonies of worship, the endowment of the church, and the support of the clergy." "When man undertakes to become God's avenger, he becomes a demon. Driven by the frenzy of a religious zeal, he loses every gentle feeling, forgets the most sacred precepts of his creed, and becomes ferocious and unrelenting."

As an avenger, man becomes a demon.

IN CONFLICT WITH INALIENABLE RIGHTS.

All Sunday laws are religious, and are in conflict with constitutional and inalienable rights. It is a well-established American principle that the taking of money from an individual by way of taxation for the support of *an established religion,* is a denial of religious liberty. Exactly the same principle is involved in the taking of a portion of time from the weekly calendar of every man's time for the support, maintenance, or preservation of *an established religious rest day.* One is a tax in *money,* the other in *time.* The principle is the same in either case. Sunday legislation, therefore, is no more defensible than is any other form of taxation for the support of religion.

The same principle involved.

WHAT IS THE EQUIVALENT?[1]

Upon Anglo-Saxon principles of government, and unquestionably the perfect governmental principle of justice, no citizen can be required to surrender the personal exercise of any of his natural rights without an equivalent. By this principle in this government of the people, even in the case of war, when "the people" would be fighting in plain self-defense, no man is ever required to leave his home and his personal affairs of natural right without receiving a definite and regular recompense. By this principle, under the exercise of the governmental right of eminent domain, the state cannot take the property of any citizen without the recompense of a fair valuation.

The Anglo-Saxon principle.

[1] From a speech of Mr. A. T. Jones before the House Committee on the District of Columbia, on the Johnston District Sunday bill, March 8, 1910.

But by Sunday laws, through enforced rest, the state deprives each citizen of one seventh of his time and effort. The right to acquire and to enjoy property, in itself, includes the right to the means and to the use of the means to acquire property. Time and effort, therefore, are property. By Sunday laws, the state, through enforced rest one whole day in seven, deprives each citizen of one-seventh of his time and effort, and thus, in effect, of one-seventh of his property.

Time and effort are property.

And what is the equivalent? — Just nothing at all — or worse. For a day of enforced rest is nothing but a day of enforced idleness. What Sunday laws do, therefore, is, by governmental force, to deprive every citizen, for one whole day in each week, of his natural right of honest occupation; and the only shadow of equivalent given in return for this is the consequent enforced idleness.

Enforced idleness the only equivalent.

But idleness is no equivalent at all for the time and effort of honest occupation. General idleness *voluntary* is only mischievous; general idleness *enforced* is far worse. Industry, industry, honest occupation, not idleness, is the life of the state. And to put upon idleness the enormous premium of making honest industry a crime to be punished by fine and imprisonment, is nothing less than governmentally suicidal.

Honest industry made a crime.

The originators and promoters of Sunday legislation know this. They know that this proposition is true; that enforced rest is enforced idleness, and therefore is mischievous. Accordingly, on that side, it has been said, and it stands in print as accepted doctrine with them, that "taking *religion* out of the day takes the *rest* out."[1] This is profoundly true. And that truth fixes it that the obligations and sanctions of a day of rest can come only from God, the Fountain of religion; for he, and only he, can supply the religion, which is the only possible equivalent of a required day of rest.

Religion essential to permanent weekly rest.

From their true premise that "taking religion out of the day takes the rest out," that religion is the only possible equivalent of required rest, it follows inevitably that from some source there must be supplied the religion which shall make effective the rest which Sunday laws enforce.

But it being enforced rest, this essential religion cannot possibly come from God, for the government of God is not of force. Neither can it come from the state, for the state is not religious, and cannot supply what it has not. But, lo! here is the church, the church combine, that originated this legislation, and that for more than twenty years has been diligently pressing it upon Congress! *She* is fully ready to supply exactly the religion that is fitting to this enforced rest.

Church will supply the religion.

The situation, then, is this: Taking religion out of the rest day takes the rest out of the religious day. The church combine demands

[1] See *ante* page 732.

that the state shall enforce the rest, and *she* will supply the religion that is essential to the rest. And they will give you no rest until they do, you may be sure of that.

The sum of the whole matter, then, is simply this:

Governmentally suicidal.

Upon their professed claim that it is merely and only to secure a rest day as a civic and economic measure, the legislation is economically and governmentally suicidal.

Church forces union of church and state on state.

Through the operation of law enforcing a day of rest, the church crowds herself upon the state as the only means of supplying the religion that is essential to required rest. Thus there is forced upon the state a union of church and state as the inevitable consequence of this legislation. And *that* can only sink the state.

Accordingly, both in its direct workings and in its consequences, Sunday legislation is evil, only evil, and that continually.

DO SUNDAY LAWS PRESERVE A NATION?[1]

The advocates of Sunday laws frequently make the claim that such laws are essential to the preservation and stability of civil government. The following are samples:

In his work "The Sabbath for Man," page 248, Rev. W. F. Crafts says:

Sunday-law logic.

"It is the conviction of the majority that the nation cannot be preserved without religion, nor religion without the Sabbath, nor the Sabbath without laws, therefore Sabbath laws are enacted by the right of self-preservation, not in violation of liberty, but for its protection."

Dr. R. C. Wylie, in his "Sabbath Laws in the United States," page 231, says:

Religious statute essential to free government.

"Our free government would be impossible without our Christian civilization; our civilization is produced and perpetuated by the Christian religion; the Christian religion cannot exist without the Christian church; the Christian church would languish and die without assemblies for public worship; assemblies for worship are impossible without a day of rest; a day of rest needs the protection of statute law."

The conclusion does not follow.

Even if it were admitted that religion and the Sabbath are essential to the preservation and stability of civil government, it would not follow that these should be enforced by civil law, or that that kind of religion or that kind of Sabbath which is enforced by civil law, or which needs the aid of civil law for its own preservation, can save the nation. The very fact that any religion or any Sabbath needs the aid of civil law for its own preservation is proof that there is no

[1] By the editor of the revised edition of this work.

salvation in it. If it cannot stand without the help of the government, it surely cannot uphold or preserve the government. The fallacy in these arguments lies in the statements that the Sabbath cannot be preserved "without laws," and that "a day of rest needs the protection of statute law." Benjamin Franklin never spoke more wisely nor more truly than when he said: "When religion is good, it will take care of itself; when it is not able to take care of itself, and God does not see fit to take care of it, so that it has to appeal to the civil power for support, it is evidence to my mind that its cause is a bad one."

Franklin's utterance.

At a mass meeting held in the New York Avenue Presbyterian church in Washington, D. C., February 26, 1908, in the interest of Sunday legislation, Justice Harlan, of the Supreme Court of the United States, who presided, said:

"I have always felt very keenly upon this subject of the Sabbath day, not that I have kept it as I ought to; but I firmly believe that next to the marriage relation the proper observance of the Sabbath day is at the very basis of our civilization. A nation without a sabbath is a civilization that is rotten — rotten to the core. You cast your eye over the nations of to-day, and I think without an exception the nations that turn the Sabbath day into a holiday and a day of amusement are on the down grade."

Justice Harlan's reasoning.

It is quite proper for men to feel keenly over the subject of the Sabbath *day*, but it is quite another thing for them to become anxious for a Sabbath *law*. It may be true, and doubtless is true, that next to the marriage relation the proper observance of the Sabbath day lies at the very foundation of many of our greatest blessings; but because this is so, it no more follows that "the proper observance of the Sabbath day" can be secured *by law*, than that proper marriage relations can be secured *by law;* or that Sabbath observance should be *made compulsory* and *enforced by law*, any more than that marriage should be *made compulsory* and *enforced by law*. Both those who observe the Sabbath and those who marry should receive the protection of law; but there should be compulsion in neither case. A nation without a *Sabbath* may be a civilization rotten to the core, but it does not follow that a nation should have a Sabbath *law*. Any one needs but to cast his eye over the nations, both of to-day and of the past, to learn that the nations that have and that have had Sunday laws are the ones that have turned their Sabbath day into a holiday and a day of amusement, and are either extinct or on the down grade. The Roman empire had Sabbath laws galore, but the Roman empire is no more.

The statement analyzed.

Sabbath laws turn day into holiday.

In a word, and to sum it all up, proper Sabbath observance never has been and never can be produced by human Sabbath laws, and therefore, though the existence of the world itself depended upon such observance, it could not be preserved by such laws. The sav-

ing salt of true Sabbath observance is *religion;* the motive powers of genuine religion are *faith* and *love;* faith and love cannot be produced by *force;* therefore no human law, which is only of force, can ever produce true Sabbath observance.

SUNDAY ENFORCEMENT RUINOUS.[1]

The Sunday-law claim.

The leaders in the Sunday movement make one of the foundation claims of their work "the preservation of society, the State, the nation." It is for this that they insist upon the enactment of Sunday laws.[2] Accordingly, they are always calling for more Sunday laws. It matters not what far-reaching Sunday laws may be already on the statute books, they call for still more Sunday laws, and the more vigorous enforcement of them all round.

A pernicious fallacy.

Yet this whole thing is one of the most pernicious of fallacies. It is not only such pernicious fallacy in principle, but it has been abundantly demonstrated to be such in practice. Every point advocated by the Sunday-law workers to-day has been weighed in the balances of practice and of experience, and has been found utterly wanting. The whole thing has been tested on a world-theater, and has been found absolutely vain and ruinous.

Example of the Roman empire.

The greatest example of national ruin, the most complete destruction of the state, the most thorough annihilation of society, that has ever been seen on this earth, occurred where there were the most and the most far-reaching Sunday laws. That was in the Western empire of Rome.

Sunday laws in Western Rome.

In A. D. 313 the Western empire became "Christian." In 314 the first state favor was shown for Sunday. In 321 the first direct Sunday law was enacted. And so it went on with one Sunday law after another, till by 425 every kind of secular work or amusement was strictly forbidden on Sunday. By that time, too, wickedness and corruption of every sort had multiplied in this "Christian" empire to such an extent that the judgment of God in destruction had already begun to fall unchecked.

The devastating hordes.

In 351 the Franks and Alemanni swept like a fire, a space of one hundred twenty miles, from the source to the mouth of the Rhine.

In 400-403 the Visigoths carried destruction and devastation through Rumania and into Italy as far as to Milan.

In 405-429 a mighty host of Suevi, Vandals, and Burgundians ravaged Italy as far as Florence, the greater part of Gaul, all of Spain, and all of Africa to Carthage.

[1] Article in the "American Sentinel," by A. T. Jones.

[2] For examples of this, see preceding article on "Do Sunday Laws Preserve a Nation?"

In 408-419 the Visigoths overflowed the whole of Italy, all south-western Gaul, and all of Spain.

In 449 the Angles and Saxons entered Britain, and never rested until "the arts and religion, the laws and language, which the Romans had so carefully planted in Britain, were extirpated;" not until "the practice and even the remembrance of Christianity were abolished."

In 451-453 the Huns under Attila carried fire and slaughter from the Danube to Chalons and to Milan.

In 453 the Ostrogoths took possession of the province of Pannonia, and the Lombards, of Noricum.

In 476 Odoacer and his barbarian followers took possession of Italy, and abolished the office of emperor of the West; and the Western empire of Rome — the state, and even society — had been swept away by ruin upon ruin.

Sunday laws did not preserve the "Christian" Roman empire.

And that was the "Christian" empire of Rome. That was the empire that had exhausted the subject of Sunday laws and enforced Sunday observance. That was the state that had done all this on behalf of the kingdom of God, and for the preservation and even the salvation of the state.

Every kind of Sunday law tried in the Roman experiment.

There is not a method of Sunday enforcement, either mild or cruel, that has not been in that "Christian" Roman empire. There is not a phase of Sunday laws that has not been employed by the clerical managers of affairs in that "Christian" Roman state. There is nothing on that subject left by those for the Sunday-law clergy of to-day to discover. And the Sunday-law clergy of to-day must hide their eyes, not only from the *principles*, but also from the *practical effects* of Sunday legislation of every kind, before they can go on in their pernicious Sunday-law course.

Ruined greatest nation in world.

For pernicious that course is, even to the ruin of the greatest nation and state in the world. This has been thoroughly demonstrated to the last detail, and in the demonstration it has been made plain that enforced Sunday observance is the worst thing that can ever be put upon a nation or practiced in society.

TESTIMONY OF JUDGE THOMAS BARLOW.[1]

Christianity of a kingdom not of this world.

Christianity being of a kingdom not of this world, cannot be united with that of this world. This is too plain a proposition to be denied, and when the church descends to asking civil power to aid in its support, there is something dangerously carnal in the purpose.

The observers of the first day of the week as the Sabbath can ask no more for their religious convictions than can those who observe the seventh day. If the seventh-day worshipers were to demand of

[1] From the Rome (N. Y.) "Daily Sentinel," January 27, 1891.

The proposition reversed.

government a forced observance of their day, those of the first day would look upon it as arid presumption, and rightfully so, too; and so is the demand of the observers of the first day toward those of the seventh day, and a free government must so consider it.

Sunday legislation a stepping-stone to oppression.

The church has always been seeking power and never surrenders any without being compelled. The effort at Sunday laws at this time is but a stepping-stone to that which would be still more oppressive. Look at the case of a Mr. King, of Tennessee, a worshiper of the seventh-day school. He plowed a piece of land quietly on his own farm on Sunday, and Pharisees of the first-day school prosecuted him and obtained a conviction for that act and a fine of seventy-five dollars imposed for it, and he was cast into prison. No one was molested by his work, but the old spirit of Puritanism indulged itself in that infamous proceeding. No man identified with the law allowing such a conviction, be he a priest or layman, juryman or judge, or legislator, is worthy the enjoyment of the privileges of a free civil government. It was hoped that Puritanism was dead in this country. But its spirit seems still to be among us, seeking its gratification in the meanest manner possible.

If the church had the power, every unbeliever would be outlawed; no one could hold office unless he was a church-member, nor be allowed to teach a common school.

THE PRINCIPLE APPLIED.

An inborn principle.

Col. Richard M. Johnson spoke truly when, in those famous Sunday Mail Reports adopted by Congress in 1829 and 1830, he said that the feeling that our "duty to God" is "superior to human enactments," and that man cannot rightfully "exercise authority" over the conscience, is "an inborn principle which nothing can eradicate." To confirm this he added: "The bigot, in the pride of his authority, may lose sight of it; but strip him of his power, prescribe a faith to him which his conscience rejects, threaten him in turn with the dungeon and the fagot, and the spirit which God has implanted in him rises up in rebellion, and defies you." See page 260.

The principle illustrated.

The truthfulness of this observation is well illustrated in the following editorial, under the caption "Church and State," in the Wichita, Kansas, "Catholic Advance," of November 5, 1910:

"Bishop Hamilton, of the Methodist church, said that Kansas was the greatest Methodist State in the Union. The preachers of that denomination seem to have things their own way in Kansas, and the only thing the few other people who don't ride in the Wesley boat can do is to watch and pray. We will let them preach the prohibition law until they pound their pulpits to pieces, . . . but we are strenuously opposed to any legislation that will deprive our young

people of health-giving outdoor sport on Sunday afternoon. The Sunday is a day of rest from servile work, but is not a day of inactivity or laziness. The Catholic Church established the Sunday anyhow, and ought to know best how it is to be observed. She demands, under pain of sin, that all her faithful be present at the holy sacrifice of the mass on Sundays and hear the Word of God preached from the pulpits. She requires some considerable time for prayer. This obligation being satisfied, she does not prohibit or interfere in any way with those innocent amusements which serve for rest or recreation on any day. If our Methodist brethren choose to make laws for a more restricted observance of the Sunday among their own people, that is certainly within their right, and it is no business of ours; but when the same Methodist brethren put their heads together and decide as a church that they will have the State enforce their own church laws upon other churches who do not believe with them, then this is time to call a halt. If they will have the State Legislature to enact laws forbidding Methodist children from playing baseball on Sunday afternoons, well, if they haven't religious spunk enough to keep them in the beaten Wesleyan track, we have no objection if they call in the policeman, but we won't allow them to send a policeman over to us, as we get along beautifully without."

Opposed to law interfering with liberties on Sunday.

Time to call a halt.

Apply this doctrine to all who dissent from domination on the part of others in religious matters, and every church establishment and every Sunday law in the world would fall. And yet the doctrine is right. No one wishes the policeman sent to instruct him how he should conduct himself religiously. But this is the logic of every Sunday law ever enacted. The Golden Rule test is sufficient to condemn them all.

Principle applied would abolish all religious laws.

VERDICT OF UNITED STATES SENATE.

"It is not in the legitimate province of the Legislature to determine what religion is true or what false. Our government is a civil and not a religious institution. Our Constitution recognizes in every person the right to choose his own religion, and to enjoy it freely without molestation. . . . The proper object of government is to protect all persons in the enjoyment of their civil as well as their religious rights, and not to determine for any whether they shall esteem one day above another, or esteem all days alike holy. . . . What other nations call religious toleration, we call religious rights. They are not exercised in virtue of governmental indulgence, but as rights of which government can not deprive any portion of its citizens, however small. Despotic power may invade those rights, but justice still confirms them."[1]

Our government civil, not religious.

[1] United States Senate Sunday Mail Report, 1829. See *ante* pages 237, 234, 242.

HOUSE OF REPRESENTATIVES' VERDICT.

"Despots may regard their subjects as their property, and usurp the divine prerogative of prescribing their religious faith; but the history of the world furnishes the melancholy demonstration that the disposition of one man to coerce the religious homage of another, springs from an unchastened ambition, rather than a sincere devotion to any religion. . . . The catastrophe of other nations furnished the framers of the Constitution a beacon of awful warning, and they have evinced the greatest possible care in guarding against the same evil. . . . The principles of our government do not recognize in the majority any authority over the minority, except in matters which regard the conduct of man to his fellow man. . . . The Constitution regards the conscience of the Jew as sacred as that of the Christian, and gives no more authority to adopt a measure affecting the conscience of a solitary individual than that of a whole community."[1]

The warning of history.

VIEWS OF DR. ALBERT BARNES.

"If we can have a Sabbath sacred in its stillness and its associations, maintained by a healthful, popular sentiment, rather than by human laws, . . . Christianity is safe in this land, and our country is safe. If not, the Sabbath, and religion, and liberty will die together. If the Sabbath is not regarded as holy time, it will be regarded as pastime; if not a day sacred to devotion, it will be a day of recreation, of pleasure, of licentiousness."[2]

Not by human laws.

SHORT SUMMARY BY HON. WM. F. VILAS.[3]

My views upon this subject come from the teachings of Jefferson and Madison, and reflection and observation strengthen them continually. It must be accorded to be an inevitable deduction from all our history that humanity cannot be brought into accord on questions of religion. No subject has ever been more prolific of fierce strife. No means of determining differences between different religions or different sects has been found. The truth of revelation is contested, and every sect or religion which believes in a special communication finds others who disbelieve as ardently.

Uniformity in religious views impossible.

"This short summary of a long and painful history shows amply the absolute necessity of entire freedom of opinion in respect to subjects which mankind must differ upon. The whole business of the state with religion is to protect all in their religious rights of religious opinion, undisturbed by others. The absolute independence of the church from the state and the state from the church, meaning by 'the church' every form or fashion of religious belief, is a doctrine which must be insisted upon continually as absolutely essential to the peace and concord of the country."

Necessity of entire separation of church and state.

[1] See pages 250, 249, 251, 254. [2] "Practical Sermons." [3] From letter to compiler of this work. Mr. Vilas was Postmaster-General under President Cleveland 1885 to 1888.

PART VIII.

History of Sunday Legislation.

"When religion is good, it will take care of itself; when it is not able to take care of itself, and God does not see fit to take care of it, so that it has to appeal to the civil power for support, it is evidence to my mind that its cause is a bad one."—*Benjamin Franklin.*

HISTORY OF SUNDAY LEGISLATION.

A HISTORICAL SUMMARY OF SUNDAY LEGISLATION FROM 321 TO THE PRESENT TIME.[1]

WRITTEN BY DR. A. H. LEWIS.

Nature of first Sunday legislation.

The first Sunday legislation was the product of that pagan conception, so fully developed by the Romans, which made religion a department of the state. This was diametrically opposed to the genius of New Testament Christianity. It did not find favor in the church until Christianity had been deeply corrupted through the influence of Gnosticism and kindred pagan errors. The Emperor Constantine, while still a heathen — if indeed he was ever otherwise — issued the first Sunday edict by virtue of his power as Pontifex Maximus in all matters of religion, especially in the appointment of sacred days. This law was pagan in every particular.

Christianization of pagan holidays.

Sunday legislation between the time of Constantine and the fall of the empire, was a combination of the pagan, Christian, and Jewish cults. Many other holidays — mostly pagan festivals baptized with new names and slightly modified — were associated, in the same laws, with the Sunday.

Mediæval influence.

During the middle ages, Sunday legislation took on a more Judaistic type, under the plea of analogy, whereby civil authorities claimed the right to legislate in religious matters, after the manner of the Jewish theocracy.

Puritanic theory and legislation.

The continental Reformation made little change in the civil legislation concerning Sunday. The English Reformation introduced a new theory, and developed a distinct type of legislation. Here we meet, for the first time, the doctrine of the transfer of the fourth commandment to the first day of the week, and the consequent legislation growing out of that theory. The reader will find the laws of that period to be extended theological treatises, as well as civil enactments. The Sunday laws of the United States are the direct outgrowth of the Puritan legislation, notably, of the Cromwellian period. These have been much modified since the colonial times, and the latest tendency, in the few

Interesting historical summary of Sunday laws.

[1] This interesting summary of the history of Sunday laws here presented throws light upon the Sunday laws of the United States found in the preceding pages. It is from the preface and chapters 1, 2, 4, and 5 of Dr. H. A. Lewis's "Critical History of Sunday Legislation from 321 to 1888 A. D." (New York, D. Appleton & Company, 1888), a valuable addition to our literature upon the Sunday problem. The act of the twenty-ninth year of Charles II, is inserted to show the direct connection which our Sunday laws have with the church and state laws of England, and through them with the ecclesiastical domination of the dark ages. The connection is direct, and the evidence as to the religious nature of Sunday laws is conclusive.

Modern policy.

cases which come to direct trial under these laws, is to set forth laws of a wholly different character, through the decisions of the courts.

In the Sunday legislation of the Roman Empire the religious element was subordinate to the civil. In the middle ages, under Cromwell, and during our colonial period, the church was practically supreme.

Modern claims.

Some now claim that Sunday legislation is not based on religious grounds. This claim is contradicted by the facts of all the centuries.

Origin of all Sunday laws.

Every Sunday law sprang from a religious sentiment. Under the pagan conception, the day was to be "venerated" as a religious duty owed to the god of the sun. As the resurrection-festival idea was gradually combined with the pagan conception, religious regard for the day was also demanded in honor of Christ's resurrection. In the middle-age period, sacredness was claimed for Sunday because the Sabbath had

Puritanic ideas of Sunday.

been sacred under the legislation of the Jewish theocracy. Sunday was held supremely sacred by the Puritans, under the plea that the obligations imposed by the fourth commandment were transferred to it.

Nature of Sunday laws.

There is no meaning in the statutes prohibiting "worldly labor," and permitting "works of necessity and mercy," except from a religious standpoint. There can be no "worldly business," if it be not in contrast with religious obligation. Every prohibition which appears in Sunday legislation is based upon the idea that it is wrong to do on Sunday the

Scientific grounds not the basis of Sunday laws.

things prohibited. Whatever theories men may invent for the observance of Sunday on non-religious grounds, and whatever value any of these may have from a scientific standpoint, we do not here discuss; but the fact remains that such considerations have never been made the basis of legislation. To say that the present Sunday laws do not deal with the day as a religious institution, is to deny every fact in the history of such legislation. The claim is a shallow subterfuge. . . .

A shallow subterfuge.

Evolution of laws.

The original character of laws and institutions is not easily lost. History is a process of evolution, whereby original germs, good or bad, are developed. In the process of development modifications take place, and methods of application change; but the properties of the original germ continue to appear. Neither legislation nor the influence of the church have been able to prevent the development of holidayism and its associate evils in connection with Sunday. . . .

Sunday legislation pagan.

The preceding chapter [chapter 1] shows that there was nothing new in the legislation by Constantine concerning the Sunday. It was as much a part of the pagan cultus, as the similar legislation concerning other days which had preceded it. Such legislation could not spring

Christianity opposed to it.

from apostolic Christianity. Every element of that Christianity forbade such interference by the state. The pagan character of this first Sunday legislation is clearly shown, not only by the facts above stated, but by

Evidence of its pagan character.

the nature and spirit of the law itself. Sunday is mentioned only by its pagan name, "venerable day of the sun." Nothing is said of any relation to Christianity. No trace of the resurrection-festival idea appears. No reference is made to the fourth commandment or the Sabbath, or

anything connected with it. The law was made for all the empire. It applied to every subject alike. The fact that on the day following the publication of the edict concerning the Sunday, another was issued, ordering that the haruspices[1] be consulted in case of public calamity, which was thoroughly pagan in every particular, shows the attitude of the emperor and the influences which controlled him.

Constantine's paganism.

The following is the complete text of the laws just referred to. It will repay the reader for prolonged and careful study:

FIRST SUNDAY EDICT.

Constantine's Sunday edict.

"Let all judges and all city people and all tradesmen rest upon the *venerable day of the sun*. But let those dwelling in the country freely and with full liberty attend to the culture of their fields; since it frequently happens that no other day is so fit for the sowing of grain or the planting of vines; hence, the favorable time should not be allowed to pass, lest the provisions of heaven be lost.

"Given the seventh of March, Crispus and Constantine being consuls, each for the second time (321)."

"Codex Justin," lib. iii, tit. xii, l. 3.

EDICT CONCERNING HARUSPICES.

"*The August Emperor Constantine to Maximus:*

Pagan edict by Constantine.

"If any part of the palace or other public works shall be struck by lightning, let the soothsayers, following old usages, inquire into the meaning of the portent, and let their written words, very carefully collected, be reported to our knowledge; and also let the liberty of making use of this custom be accorded to others, provided they abstain from private sacrifices, which are specially prohibited.

"Moreover, that declaration and exposition, written in respect to the amphitheater being struck by lightning, concerning which you had written to Heraclianus, the tribune, and master of offices, you may know has been reported to us.

"Dated the sixteenth, before the calends of January, at Serdica (320). Acc. the eighth, before the Ides of March, in the consulship of Crispus II and Constantine III, Cæsars Coss. (321)."

"Codex Theo.," lib. xvi, tit. x, l. 1.

It will be difficult for those who are accustomed to consider Constantine a "Christian emperor" to understand how he could have put forth the above edicts. The facts which crowd the preceding century will fully answer this inquiry. The sun-worship cult had grown steadily

[1] The "Encyclopedia Britannica," volume xi, page 500, says: "HARUSPICES (literally, entrail-observers, *confer* Sanskrit *hiḷâ*, Greek χορδή), a class of soothsayers in Rome. Their art consisted especially in deducing from the appearance presented by the entrails of the slain victim the will of the gods. . . . In later times the art fell into disrepute, and the saying of Cato the censor, is well known, that he wondered one haruspex could look another in the face without laughing (Cic., *De Div.* ii, 24)." Nature of haruspices.

Reasons for issuing the Sunday edict.

in the Roman Empire for a long time. In the century which preceded Constantine's time, specific efforts had been made to give it prominence over all other systems of religion. The efforts made under Heliogabalus (218–222 A. D.) marked the ripening influence of that cult, both as a power to control and an influence to degrade Roman life.[1] . . .

Origin of Sunday legislation.

All Sunday legislation is the product of pagan Rome. The Saxon laws were the product of the middle-age legislation of the "Holy Roman Empire." The English laws are an expansion of the Saxon, and the American are a transcript of the English. Our own laws were all inchoate in those [the Saxon laws] which are found below. . . .

Descent of these laws.

The early Sunday laws in England were but the expansion of the Saxon laws. When compared with the Saxon laws, they show the successive links by which our Sunday laws have been developed from the original source. They are of great value, beyond their mere historic interest, in showing how the advance of civilization and of Christianity has left the original idea behind. . . .

THE SUNDAY LAW OF CHARLES II.[2]

The model Sunday law.

The act of the 29th of Charles II, chapter vii, issued in 1676, was the law of the American colonies up to the time of the Revolution, and so became the basis of the American Sunday laws. It runs as follows:

"For the better observation and keeping holy the Lord's day, commonly called Sunday: be it enacted by the king's most excellent majesty, and by and with the advice and consent of the lords, spiritual and temporal, and of the commons in this present Parliament assembled, and by the authority of the same, that all the laws enacted and in force concerning the observation of the day, and repairing to the church thereon, be carefully put in execution; and that all and every person and persons whatsoever shall upon every Lord's day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and privately; and that no tradesman, artificer, workman, laborer, or other person whatsoever, shall do or exercise any worldly labor or business or work of their *ordinary callings* upon the Lord's day, or any part thereof (works of necessity and charity only excepted), and that every person being of the

Compulsory attendance at church.

Compulsory Sunday observance.

Degradation and universality of sun-worship.

[1] Sun-worship has ever been the most extensive and degrading of all heathen idolatry. In the "Encyclopedia Britannica," article "Baal," is the following: "As the sun-god, he [Baal] is conceived as the male principle of life and reproduction in nature, and thus in some forms of his worship is the patron of the grossest sensuality, and even of systematic prostitution." In an article in the "Old Testament Student," January, 1886, Dr. Talbot W. Chambers said that the worship of the sun is "the oldest, the most widespread, and the most enduring of all forms of idolatry known to man. The universality of this form of idolatry is something remarkable. It seems to have prevailed everywhere."

[2] "Johnson's Universal Cyclopedia" says: "This statute, somewhat modified by subsequent laws, is the present Sunday law of England, and lies at the basis of the Sunday laws of this country." Revised edition, volume vii, page 626, article "Sunday."

age of fourteen years or upwards offending in the premises shall, for every such offense, forfeit the sum of five shillings; and that no person or persons whatsoever shall publicly cry, show forth, or expose for sale any wares, merchandise, fruit, herbs, goods, or chattels whatsoever, upon the Lord's day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth or exposed for sale. Penalty.

"2. And it is further enacted that no drover, horse-courser, wagoner, butcher, higgler, they or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's day, or any part thereof, upon pain that each and every such offender shall forfeit twenty shillings for every such offense; and that no person or persons shall use, employ, or travel upon the Lord's day with any boat, wherry, lighter, or barge, except it be upon extraordinary occasion to be allowed by some justice of the peace of the county, or some head officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed, upon pain that every person so offending shall forfeit and lose the sum of five shillings for every such offense." Sunday traveling prohibited. Penalty.

[The remainder of section two places such cases in the hands of ordinary justices of the peace, orders the confiscation of goods cried or exposed, and the collection of fines by distraint if needful. In case the offender cannot meet the penalties, he shall "be set public in the stocks for the space of two hours."]

"3. *Provided*, That nothing in this act contained shall extend to the prohibiting of dressing meats in families, or dressing or selling of meat in inns, cook-shops, victualing houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning, or after four of the clock in the afternoon." Exemptions.

[Section four requires all prosecution to be made within ten days of the offense.]

[Section five protects the district in which any one traveling on Sunday may chance to be robbed from being responsible for the amount lost, but requires the people to make diligent effort to apprehend the robber after "hue and cry" has been made, under penalty of forfeiting to the crown the amount which might have been recovered.]

"SECTION 6. *Provided, also*, That no person or persons upon the Lord's day shall serve or execute, or cause to be served or executed, any writ, process, warrant, order, judgment, or decree (except in case of treason, felony, or breach of the peace), but that the service of every such writ, process, warrant, order, judgment, or decree, shall be void to all intents and purposes whatever; and the person or persons so serving or executing the same shall be as liable to the suit of the party grieved, and to answer damages to him for the doing thereof, as if he or they had done the same without any writ, process, warrant, order, judgment, or decree at all." "Revised Statutes of England from 1235–1685 A. D." (London, 1870), pages 779, 780; also "British Statutes at Large" (London, 1786), volume iii, page 365. Legal papers not to be served on Sunday.

GENEALOGY OF SUNDAY LAWS.

The following statements, in form of quotations, present in succinct form the real facts as to the origin and history of Sunday laws:

Churches influenced States.

1. PROTESTANTISM IN AMERICA: "During nearly all our American history the churches have influenced the States to make and improve Sabbath laws." Rev. W. F. Crafts, in "Christian Statesman" July 3, 1890.

Older States.

2. YOUNGER STATES OF AMERICA: "In Sunday legislation we have followed the example of the older States."

From oldest States.

3. OLDER STATES: "In Sunday legislation and judicial decisions we have followed the example of the oldest States."

From colonies.

4. OLDEST STATES: "In the matter of Sunday legislation we have followed the example of the original colonies."

From England.

5. ORIGINAL COLONIES: "In the matter of Sunday legislation we followed the precedents and example of old England, which had an established religion and a church and state system."

6. OLD ENGLAND: "In the matter of Sunday laws and religious legislation, they are the relics of the Catholic Church, incorporated among us when that church was the established church of the empire. When Henry VIII, about 1544 A. D., renounced allegiance to the pope, we retained and are still cherishing these papal relics."

From Rome.

7. CATHOLIC CHURCH: "Sunday laws and religious legislation were incorporated in our system by the craft, flattery, and policy of Constantine and the ambitious bishops of his time, together with the decrees of popes and councils of later date, by which we transmuted the 'venerable day of the sun,' the 'wild solar holiday of all pagan times,' into the Christian Sabbath, in honor of the resurrection."

Pagan day transmuted.

Sun worship the start.

8. PAGANISM: "With us, Sunday observance originated in sun-worship, the day on which the Almighty began his work of creation, and on which light was created; this day, the first in the week, being dedicated by us to the greatest, brightest, and most luminous visible object in the heavens, the sun." See Rom. 1: 21-25; Eze. 8: 15, 16.[1]

Sunday.

9. SUNDAY: "So called because this day was anciently dedicated to the *sun*, or to its worship." Webster.

Ancient idolatry.

10. SUN WORSHIP: "The most ancient form of idolatry." See Job 31: 26-28, and *ante* page 754.

[1] THE IMPOSSIBLE.—Any other day than the first might have been God's rest day. Instead of creating the heavens and earth in six days and resting on the seventh, he might have created them in five, four, three, or two days, or even in one day, and rested the next; but he could not have created them on the first day and rested on that same day. This would have been impossible. Thus, in changing God's rest day, men have chosen the impossible. This is the day the observance of which men, for sixteen hundred years, have been seeking to enforce upon their fellow men by law, and concerning which there is now in progress a world-wide movement for its compulsory observance. This, in subtle and refined form, is but the returning to paganism and to pagan methods under a Christian guise. Every rival to God is an idol, and its worship idolatry; and corruption, intolerance, and oppression are invariable accompaniments of idolatry.

The one day impossible.

APPENDIX.

THE DECLARATION OF INDEPENDENCE.

WHEN, in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume, among the powers of earth, the separate and equal station to which the laws of nature and of nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation. Causes of separation.

We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and accordingly, all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having, in direct object, the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world: Self-evident truths. Mankind disposed to suffer wrong.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his governors to pass laws of immediate and

pressing importance, unless suspended in their operation till his assent should be obtained; and, when so suspended, he has utterly neglected to attend to them.

The facts submitted.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature; a right inestimable to them, and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved representative houses repeatedly for opposing, with manly firmness, his invasions on the rights of the people.

He has refused, for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise, the State remaining, in the meantime, exposed to all the danger of invasion from without and convulsions within.

He has endeavored to prevent the population of these States, for that purpose obstructing the laws for the naturalization of foreigners, refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers to harass our people and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our Legislature.

He has affected to render the military independent of, and superior to, the civil power.

He has combined, with others, to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws, giving his assent to their acts of pretended legislation:

For quartering large bodies of armed troops among us;

For protecting them, by a mock trial, from punishment for any murders which they should commit on the inhabitants of these States;

For cutting off our trade with all parts of the world;

For imposing taxes on us without our consent;

For depriving us, in many cases, of the benefits of trial by jury;

For transporting us beyond seas to be tried for pretended offenses;

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies;

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the powers of our government;

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here, by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

He is, at this time, transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny already begun, with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow-citizens, taken captive on the high seas, to bear arms against their country, to become the executioners of their friends and brethren, or to fall themselves by their hands.

He has excited domestic insurrections among us, and has endeavored to bring on the inhabitants of our frontiers the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.

Petitions for redress unavailing.

In every stage of these oppressions we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince whose character is thus marked by every act which may define a tyrant is unfit to be the ruler of a free people.

Warnings given.

Nor have we been wanting in attention to our British brethren. We have warned them, from time to time, of attempts made by their Legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them, by the ties of our common kindred, to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They, too, have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace friends.

Deaf to appeals.

The declaration of freedom.

We, therefore, the representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name and by the authority of the good people of these Colonies, solemnly publish and declare, That these United Colonies are, and, of right, ought to be, *free and independent States;* that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as *free and independent States,* they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which *independent States* may of right do. And, for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes, and our sacred honor.

Signers.

Massachusetts Bay.

JOHN HANCOCK,
SAMUEL ADAMS,
JOHN ADAMS,
ROBERT TREAT PAINE,
ELBRIDGE GERRY.

Connecticut.

ROGER SHERMAN,
SAMUEL HUNTINGTON,
WILLIAM WILLIAMS,
OLIVER WOLCOTT.

New Hampshire.

JOSIAH BARTLETT,
WILLIAM WHIPPLE,
MATTHEW THORNTON.

Rhode Island.

STEPHEN HOPKINS,
WILLIAM ELLERY.

New York.

WILLIAM FLOYD,
PHILIP LIVINGSTON,
FRANCIS LEWIS,
LEWIS MORRIS.

New Jersey.

RICHARD STOCKTON,
JOHN WITHERSPOON,
FRANCIS HOPKINSON,
JOHN HART,
ABRAHAM CLARK.

Pennsylvania.

ROBERT MORRIS,
BENJAMIN RUSH,
BENJAMIN FRANKLIN,
JOHN MORTON,
GEORGE CLYMER,
JAMES SMITH,
GEORGE TAYLOR,
JAMES WILSON,
GEORGE ROSS.

Delaware.

CÆSAR RODNEY,
GEORGE READ,
THOMAS MCKEAN.

Maryland.

SAMUEL CHASE,
WILLIAM PACA,
THOMAS STONE,
CHARLES CARROLL, of Carrollton.

Virginia.

GEORGE WYTHE,
RICHARD HENRY LEE,
THOMAS JEFFERSON,
BENJAMIN HARRISON,
THOMAS NELSON, JR.,
FRANCIS LIGHTFOOT LEE,
CARTER BRAXTON.

North Carolina.

WILLIAM HOOPER,
JOSEPH HEWES,
JOHN PENN.

South Carolina.

EDWARD RUTLEDGE,
THOMAS HEYWARD, JR.,
THOMAS LYNCH, JR.,
ARTHUR MIDDLETON.

Georgia.

BUTTON GWINNETT,
LYMAN HALL,
GEORGE WALTON.

THE CONSTITUTION OF THE UNITED STATES.

Preamble.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I.

Legislative powers.

Section 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

House of Representatives.

Section 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each State shall have at least one representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three; Massachusetts, eight; Rhode Island and Providence Plantations, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, ten; North Carolina, five; South Carolina, five; and Georgia, three.

Census every ten years.

When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

The Senate.

Section 3. The Senate of the United States shall be composed of two senators from each State, chosen by the Legislature thereof, for six years; and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration

of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation, or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected, be an inhabitant of that State for which he shall be chosen.

The Vice-President of the United States shall be president of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

Impeachments.

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside. And no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Elections.

SECTION 4. The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the places of choosing senators.

Congress assemble at least once a year.

The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall, by law, appoint a different day.

SECTION 5. Each house shall be the judge of the elections, returns, and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Rules of proceeding and order.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Journal of proceedings.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except

treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place. Salaries.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office. Members of Congress not to hold civil office during term.

SECTION 7. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills. Revenue bills must originate in House.

Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases, the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sunday excepted)[1] after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return; in which case it shall not be a law. How bills become law. Sunday excepted.

Every order, resolution, or vote to which the concurrence of the Senate and the House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

SECTION 8. The Congress shall have power —

[1] By inserting this parenthetical expression the framers of the Constitution doubtless intended merely to recognize the right of the President, in harmony with a prevailing custom, to observe a weekly day of rest if he chose to do so, and not to establish a Sabbath by law, or in any way make its observance mandatory. But the advantage which the advocates of a union of church and state have taken of this brief parenthetical expression, shows the danger there is in giving the slightest ground or pretext for their claims in any law or legal document. At once they say: "This shows this to be a Christian nation; Christianity is the religion of the nation; and Sunday laws are proper, and constitutional." This is an excellent illustration of how a little leaven is made to leaven the whole lump. With the advocates of religious legislation, this slight peg is sufficient to hang a whole religious establishment upon. Through this they would confer upon Congress inferential powers of such character and magnitude as to subvert the government itself, and enact laws directly forbidden by the Constitution. Danger of inserting religious provisions.

Powers of Congress.

To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post-offices and post roads;

To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the Supreme Court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions;

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;

To exercise exclusive legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock yards, and other needful buildings; and —

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other power vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Slave traffic not to be prohibited by Congress prior to 1808.

SECTION 9. The migration or importation of such persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of *habeas corpus* shall not be suspended,

unless when in cases of rebellion or invasion the public safety may require it. *Habeas corpus.*

No bill of attainder or *ex post facto* law shall be passed. No *ex post facto* law.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any State. No partiality in commerce.

No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. No appropriations except by law.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign State. No titles of nobility.

SECTION 10. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility. Limitations on States.

No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

No State shall, without the consent of Congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECTION 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President chosen for the same term, be elected as follows: Executive power.

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector. Electors.

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States. Elections.

No person, except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible Who eligible to office of President.

to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Salary of President.

The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enters on the execution of his office, he shall take the following oath or affirmation:

President's oath.

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

President Commander-in-Chief of army.

SECTION 2. The President shall be Commander-in-Chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United States, he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Duties of President.

He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the Senate shall appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SECTION 3. He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Impeachment.

SECTION 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

Judicial power.

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

SECTION 2. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

In all cases affecting ambassadors, other public ministers, and consuls, and those in which a State shall be party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Trial by jury.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Treason.

SECTION 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort.

No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attained.

ARTICLE IV.

Fraternity among States.

SECTION 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Equal rights of citizens.

SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Extradition of criminals.

A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Extradition of fugitive slaves demanded.

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

New States.

SECTION 3. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State, nor any State be formed by the junction of two or more States, or parts of States, without the consent of the Legislatures of the States concerned, as well as of the Congress.

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.

Republican form of government guaranteed.

SECTION 4. The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion, and, on application of the Legislature or of the executive (when the Legislature cannot be convened), against domestic violence.

ARTICLE V.

Amendments.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid, to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first Article, and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI.

All debts contracted and engagements entered into before the adoption of the Constitution, shall be as valid against the United States under this Constitution as under the Confederation.

Treaties supreme law.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound

thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any officer or public trust under the United States.

Oath to support Constitution.

No religious test.

ARTICLE VII.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

AMENDMENTS TO THE CONSTITUTION.

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

No religious law.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

Arms.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Quartering of soldiers.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Security of property and person.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war and public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself; nor to be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Indictment by grand jury.

Due process of law.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a

Right of speedy trial.

speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

ARTICLE VII.

Common-law suits.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

ARTICLE VIII.

Excessive bail prohibited.

Excessive bail shall not be required, nor excessive fines be imposed, nor cruel and unusual punishments inflicted.

ARTICLE IX.

Rights retained by the people.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

Reserved powers.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ARTICLE XI.

Limitation of judicial power.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

ARTICLE XII.

Electoral vote for President and Vice-President.

The electors shall meet in their respective States, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same State with themselves. They shall name in their ballots the persons voted for as President, and in distinct ballots the person voted for as Vice-President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the president of the Senate. The president of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President,

the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other Constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

ARTICLE XIII.

Slavery forbidden.

SECTION 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

SECTION 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE XIV.

Who citizens of the United States.

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State in which they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Rights of citizens guarded.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a senator or representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who,

having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officer of any State to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

SECTION 4. The validity of the public debt of the United States authorized by law, including debts incurred by payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any State shall assume to pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce by appropriate legislation, the provisions of this article.

ARTICLE XV.

The right of franchise.

SECTION 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States, or by any State, on account of race, color, or previous condition of servitude.

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

THE QUESTION OF PRECEDENT.

The fact that nearly all the States in the Union have Sunday laws is urged by some as good and sufficient reason for national Sunday legislation. The argument is invalid, for two reasons; first, because the States are not the proper guides nor models for the national government to follow in the matter of religious legislation; and secondly, because Sunday laws, being religious, are out of place in civil government, though found on the statute books of every government under heaven. The national government was established upon the principle of separation of church and state. When it was founded, nearly every State composing it had an established religion; but its founders did not take this as ground for creating a national religious establishment. They did the very reverse. Seeing the evils of religion by law, they prohibited such a thing by express provisions in the national Constitution, the supreme law of the land. The *national Constitution*, therefore, not *State laws*, is the correct guide for *national legislation*.

An invalid argument.

For over one hundred years the national government has refused to adopt a church-and-state policy through the enactment of a compulsory Sunday law. For it to begin to follow the States now in this matter would mean a reversal of its noble record.

THE CONSTITUTIONALITY OF SUNDAY LAWS.

In support of national Sunday legislation, decisions of State courts, and even of the United States Supreme Court, upholding *State* Sunday laws, are sometimes cited. But such citations are irrelevant in determining the constitutionality of *national* Sunday legislation, because *State* decisions on *State* laws, or even *United States* decisions on *State* laws, do not necessarily indicate what should be a *United States* decision on a *United States* law. This question was discussed at a hearing on the Johnston District Sunday bill, before the House District Committee, February 15, 1909, by Mr. A. T. Jones, an opponent of Sunday laws, and Mr. E. Hilton Jackson, an attorney for the Interdenominational Committee on Sunday Rest in the District of Columbia, as follows:

Irrelevant citations.

A. T. JONES: The gentleman [Mr. Jackson] made a challenge for anybody to present a federal decision against Sunday legislation. That challenge is easily and safely made. There is no *federal decision,* simply because there has never been any *federal law* on the subject. Without any *federal law* upon which an issue could be made, it is impossible to have a *federal decision.*

A safe challenge.

Therefore, his whole argument, all that he has presented here from the Supreme Court of the United States, is utterly irrelevant in this case; because that which he cited pertains solely to *State cases* and to issues of law in *the States.* It is true that the Supreme Court of the United States has repeatedly recognized the Sunday laws of *the States* as being properly within the police powers of the States. But, I repeat, the Supreme Court of the United States has never touched this question as a national or federal question, for the simple reason that there has never yet been any national or federal law on the subject. And it is only fair to state that the logic of the decisions of the Supreme Court on this *question in the States* would confine it within the police power of the States, and would exclude it from federal cognizance.

The lawyer's argument irrelevant.

No national law for adjudication.

Therefore, I repeat, the gentleman's whole argument as based on the decisions of the Supreme Court of the United States, is wholly irrelevant here.

Yet let this law which we are to-day discussing, be enacted, and then, having a statute enacted by federal authority, there will follow a federal decision.

Federal law needed for federal decision.

But there being, so far, no federal law, and therefore no federal decision, in lieu of that, here is a legal authority that should be satisfactory to the legal profession. It is Cooley's "Constitutional Limitations," chapter 13, paragraphs 1-9:

Judge Cooley cited.

"The legislators have not been left at liberty to effect a union of church and state, or to establish preferences by law in favor of any

religion or mode of worship. There is not complete religious liberty where any one sect is favored by the state and given advantage by law over other sects.

A religious persecution.

"Whatever establishes a distinction against one class or sect is, to the extent to which the distinction operates unfavorably, a persecution; and if based on religious grounds, a religious persecution. The extent of the discrimination is not material to the principle; it is enough that it creates an inequality of right or privilege."

And all of that is just what this bill is and what it does.

Lawyer Jackson's reply.

MR. E. HILTON JACKSON: The gentleman who replied concerning the federal decision did not seem to understand the matter properly. The Constitution of the United States provides, among other things, that no law shall be passed respecting the establishment of religion or the free exercise thereof. Now, if the State passes such a law, it is as much a violation of the Constitution of the United States as though the nation passed such a law, and it is possible for every one of these State laws to come under the review of the Supreme Court of the United States, as did the Minnesota law; and as far as any State law is concerned, under the principle laid down in regard to the Constitution of the United States, it becomes a federal question; and as a federal question it may be reviewed by the Supreme Court of the United States. It was upon that principle that the Minnesota law was reviewed, and it was speaking to that principle that Mr. Justice Fuller declared such laws had been declared by innumerable decisions of the courts to be constitutional.

Meaning of first amendment explained.

A. T. JONES: Mr. Chairman, it is plain that it is not I who "does not understand the matter properly." The first amendment to the Constitution is a prohibition upon *Congress only*, and not upon *any State*. So far as the first amendment goes, any State may establish any religion, and may forbid any other than this established religion, and may punish or persecute to the death all who refuse to conform to that State-established religion. Every State in the Union, except Rhode Island and Virginia, at the time of the establishment of the national Constitution, had an established religion; and as a matter of fact, the first amendment to the Constitution forbidding Congress to make any law respecting — not "*the*" but "*an* establishment of religion," was expressly for the purpose of preventing Congress from interfering with those already State-established religions.

Therefore, for the information of the gentleman, I repeat that the clause to which he referred, and misquoted, in the first amendment to the Constitution, is a prohibition upon *Congress alone*, and not upon *any State*.[1]

Blaine's proposed amendment.

[1] Had the amendment proposed by Mr. Blaine in 1875 carried (see page 349), the States as well as the federal government would have been forbidden by the national Constitution from making laws respecting religion or religious establishments.

SHOULD LEISURE BE MADE COMPULSORY?

In the case of Hennington *v.* Georgia, decided by the Supreme Court of the United States May 18, 1896, Justice Harlan, who wrote the opinion of the court, quoted approvingly the following from Chief Justice Bleckley, of the Supreme Court of Georgia, from which court the case was appealed, in support of the propriety and rightfulness of Sunday legislation:

"Leisure is no less essential than labor to the well-being of man." 163 U. S., 229.

Though granting the proposition to be correct, it does not follow that "leisure" should be made *compulsory* any more than that "labor" should be. Compulsory *labor* would be involuntary servitude, or slavery, against which this nation has set its seal, not only in the Declaration of Independence, but by a prolonged and bloody war, and by a direct prohibition in the national Constitution — the thirteenth amendment. How much less an invasion of inalienable rights would compulsory *rest* be, since rest is but the complement of labor? And if this compulsory rest has religious motives behind it, as is the case with every Sunday law, how much less a violation of the Constitution and of religious rights would it be? See the first amendment. The logic of compulsory rest will not hold.

Compulsory rest an invasion of rights.

SENATOR HEYBURN ON SUNDAY LEGISLATION.

SPEECH IN UNITED STATES SENATE ON THE JOHNSTON DISTRICT SUNDAY BILL (S. 237), MAY 26, 1911.

MR. HEYBURN: Mr. President, I have always been opposed to this class of legislation. In the very early days of the settlement of this country we had a great deal of it, and on the statute books in many of the States there are now provisions, which are termed "blue laws," that are ignored. There are some now in existence relative to the District of Columbia that are not observed or enforced.

Opposed to it.

We cannot make people good by legislation. You can punish them for being bad. The spirit upon which this is based, I suppose, is the commandment that "six days shalt thou labor." I have never known any one to propose legislation for the enforcement of that part of the commandment or trouble his mind about it, and yet, I presume, it is just as important, and was intended to be just as operative, as the following provision against performing any labor on the seventh day.

MR. GALLINGER: Does the senator think that the language "six days shalt thou labor" is a command that men and women shall labor six days?

Mr. Heyburn: It says "thou shalt labor."

A theological question.

Mr. Gallinger: I think the senator has given that a far-fetched interpretation. I am sure the theologians will not agree with him.

Mr. Heyburn: I am not a theologian. It may be fortunate for all except myself that I am not. I have due regard for the observance of the Sabbath, and I believe it should be observed, but I do not believe in legislation compelling one to do it. This measure is of more than passing importance. I had not thought it would pass without considerable discussion. I have heard it suggested that it was a delicate question upon which to speak. I do not feel it to be such. A man who can not discuss his religion has none; a man who is afraid to discuss it has none. I do not think this is an appropriate place to discuss religious questions, except so far as they may be relied upon as a basis of legislation, but I cannot refrain from expressing my regret that it is proposed in Congress to deal with the questions involved in this bill. I think I opposed a similar bill on a former occasion, and it was charged in certain places that I was an irreligious person and that I did not believe in orderly conduct on the Sabbath day. There is no foundation for that charge. I have always been a person of strong religious convictions. My ancestors have always been largely interested in religious principle and the development of it. I have followed in their footsteps, and it is because of that, at least in part, that I do not approve of this class of legislation. It was such legislation as this that wrote the annals of bloodshed and oppression and intolerance in the religious history of the world where a part of the people undertook to be sponsors for the conscience of another part. . . .

Advocates free discussion of measure.

A false charge.

Such legislation wrote annals of persecution.

This legislation grants special privileges to people who are members of religious societies. More than half the world and more than half the people in this city are not members of any religious society. It grants a special privilege to those who are which is withheld from those who are not. The law in this land, general and local, was intended to insure perfect freedom and independence to the citizen in regard to the observance of religious principles. So, as a matter of principle, I am opposed to such legislation. . . .

Special privileges granted.

Who is to say what is a sacred concert? A concert that is sacred to one person or one class of persons is not sacred to another. . . .

No man has the right to set himself up as the moral standard of all the community or of any part of the community except himself. As to the use of the Sabbath day, every man, so far as personal acts that do not include any acts of lawlessness are concerned, should be the guardian of his own morals. It was never intended that the law should lay down the rules that should constitute a good man, and say that all men must live up to those rules. That never was the intention of the lawmakers, and we discovered it very soon after we became a nation and had organized government, and we abandoned that

An individual question.

kind of legislation. It was the legislation that resulted in whipping people at the tail of the cart, placing them in the stocks, branding them upon the hands, and so forth. That was this kind of legislation under which some person or coterie of persons undertook to set themselves up as the censors of the morals of the people. I thought that age had passed. I never expected to see it revived, and I never expected to see an attempt made in the Congress of the United States to prescribe rules that are intended, I presume, to supplement the ten commandments, and I suppose every year, according to the temper of a part of the people, we shall have new prohibitions and restrictions. . . .

A relic of persecuting times.

If you are going into this question, go into it to the limit, and compel the people to live like the old Puritans of New England did when they were not allowed to have fire in their churches, and when they had to take their luncheons with them and eat them in cold sheds or where they might. If you are going to be erratic in legislation, be erratic according to some established rule, the rule of our ancestors. If you are going to recognize the rule that is recognized, or, at least, I thought it was, in all parts of this country, of religious freedom of personal action so long as it violates no law of the land and no contractual right of any one — if you are going to uphold that kind of religious freedom — you can not pass this bill.

A plea for consistency.

Bill cannot pass and maintain religious freedom.

What authority have we, whence do we derive authority, under the Constitution to enact legislation that will interfere with the personal action of a citizen that is in violation of no law applicable to the whole country? Where else in the United States does such a law as this exist? Are we going to have one code of morals in force by virtue of a law of Congress in the District of Columbia and allow people to go right outside into the State of Maryland and perform the acts that they are not allowed to perform in the District of Columbia?

No authority to pass it.

MR. GALLINGER: Why not?

MR. HEYBURN: The senator asks me why not. Are we going to convert the District of Columbia, then, into a sanctuary, into a great church, so that the citizen must get out of the District of Columbia in order that he may enjoy the ordinary and reasonable freedom of a citizen?

MR. GALLINGER: The senator must know that in a large number of the States, though not in all the States, laws very similar to this are now on the statute books. The senator must know that in regulating the liquor traffic we have prohibition in one State and local option in another State, and I do not suppose that that is an anomaly which would come under the senator's condemnation. I see no absurdity or contradiction in legislating for the District of Columbia on any matter different from what Maryland or Virginia or any other State may think it wise to do. So I think the senator's contention is not well grounded on that point.

Senator Gallinger cites State laws.

MR. HEYBURN: Would the senator be in favor of enacting a law such as this, if we had the power, that should be applicable to the whole nation?

Would favor national law.

MR. GALLINGER: I would on this subject. I do not know that I would take the exact phraseology of this bill; but I would in a general way. "Congressional Record," May 26, 1911, pages 1569-1571.

WHAT EMINENT MEN HAVE SAID.

Accountability to God.

GEORGE WASHINGTON: "Every man who conducts himself as a good citizen, is accountable alone to God for his religious faith, and should be protected in worshiping God according to the dictates of his own conscience." Reply to the Baptists of Virginia, 1789.

Mind created free.

THOMAS JEFFERSON: "Almighty God hath created the mind free; all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the holy Author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercion on either, as was in his almighty power to do." Virginia Act for Establishing Religious Freedom, 1785.

Test of good religion.

BENJAMIN FRANKLIN: "When religion is good it will take care of itself; when it is not able to take care of itself, and God does not see fit to take care of it, so that it has to appeal to the civil power for support, it is evidence to my mind that its cause is a bad one." Letter to Dr. Price.

Religion distinct from government.

JAMES MADISON: "Religion is not in the purview of human government. Religion is essentially distinct from government and exempt from its cognizance. A connection between them is injurious to both." Letter to Edward Everett, 1823.

Keep them separate.

U. S. GRANT: "Leave the matter of religion to the family altar, the church, and the private school, supported entirely by private contribution. Keep the church and state forever separate." Speech at Des Moines, Iowa, 1875.

What history shows.

MACAULAY: "The whole history of the Christian religion shows that she is in far greater danger of being corrupted by the alliance of power than of being crushed by its opposition." Essay on "Southey's Colloquies."

A satanic gift.

DR. PHILIP SCHAFF: "Secular power has proved a satanic gift to the church, and ecclesiastical power has proved an engine of tyranny in the hands of the state." "Church and State," page 11.

JOHN CLARK RIDPATH: "Proscription has no part nor lot in the modern government of the world. The stake, the gibbet, and the rack, thumbscrews, swords, and pillory, have no place among the machinery of civilization. Nature is diversified; so are human faculties,

beliefs, and practices. Essential freedom is the right to *differ*, and that right must be sacredly respected." "History of the World," Vol. III, page 1354. The right to differ.

DECLARATION OF INDEPENDENCE: "We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." Created equal.

UNITED STATES CONSTITUTION: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press." No religious law.

THOMAS CLARKE: "There are many who do not seem to be sensible that all violence in religion is irreligious, and that, whoever is wrong, the persecutor can not be right."

JOHN WESLEY: "Condemn no man for not thinking as you think. Let every one enjoy the full and free liberty of thinking for himself. Let every man use his own judgment, since every man must give an account of himself to God. Abhor every approach, in any kind or degree, to the spirit of persecution. If you can not reason nor persuade a man into the truth, never attempt to force a man into it. If love will not compel him to come, leave him to God, the judge of all." Never use force.

GIBBON: (See quotation from, on page 265.)

"FATHER" DES CHESNAIS: "If you would read the Word of God, you would find that from the beginning all good people were persecuted because they were good. Abel was slain by his brother because he was good, and Cain could not endure the sight of him." New Zealand "Kaikoura Star," April 10, 1884. Why Cain killed Abel.

ST. JOHN: "For this is the message that ye heard from the beginning, that we should love one another. Not as Cain, who was of that wicked one, and slew his brother. And wherefore slew he him? Because his own works were evil, and his brother's righteous." 1 John 3: 11, 12. Why persecutor persecutes.

MAJORITIES AND MINORITIES.

GOLDSMITH: "As ten millions of circles can never make one square, so the united voice of myriads cannot lend the smallest foundation to falsehood." "Gems of Great Authors," page 220.

JOHN STUART MILL: "If all mankind, minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind." Essay on Liberty. The rights of one.

ANDREW W. YOUNG: "Every person has the right to demand protection of the government. This protection is afforded by its police and other civil officers. So also, if these are not sufficient, the gov- The right of protection.

ernor is bound to call out the militia, to protect even a single person." "Government Class Book," page 199.

MACAULAY: "Have not almost all the governments in the world always been in the wrong on religious subjects?" Essay on "Gladstone on Church and State."

CHRISTIAN PRINCES OF GERMANY: "Let us reject this decree. In matters of conscience the majority has no power." Protest at the Diet of Spires, 1529.

TOLERATION.

LORD STANHOPE: "The time was when toleration was craved by dissenters as a boon; it is now demanded as a right; but a time will come when it will be spurned as an insult." Speech in British Parliament, in 1827.

An insult.

STANLEY MATTHEWS: "Toleration — I hate that word. There is no such thing known in this country as toleration — but civil and religious equality, equality because it is right, and a right." "The Bible in the Public Schools," page 221.

Equality *v.* toleration.

MACAULAY: "It has always been the trick of bigots to make their subjects miserable at home, and then to complain that they look for relief abroad; to divide society, and to wonder that it is not united; to govern as if a section of the state were the whole, and to censure the other sections of the state for their want of patriotic spirit." "The doctrine which, from the very first origin of religious dissensions, has been held by all bigots of all sects, when condensed into few words, and stripped of rhetorical disguise, is simply this: I am in the right, and you are in the wrong. When you are the stronger you ought to tolerate me; for it is your duty to tolerate truth. But when I am the stronger, I shall persecute you; for it is my duty to persecute error." Essays on "Civil Disabilities of the Jews" and "Sir James Mackintosh."

The trick and doctrine of the bigot.

LINCOLN'S WARNING.

ABRAHAM LINCOLN: "What constitutes the bulwark of our own liberty and independence? It is not our frowning battlements, our bristling seacoasts, our army and our navy. These are not our reliance against tyranny. All of these may be turned against us without making us weaker for the struggle. Our reliance is in the love of liberty which God has planted in us. Our defense is in the spirit which prizes liberty as the heritage of all men, in all lands everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors. Familiarize yourself with the chains of bondage, and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you." From Speech at Edwardsville, Ill., Sept. 13, 1858.

Our reliance — the love of liberty.

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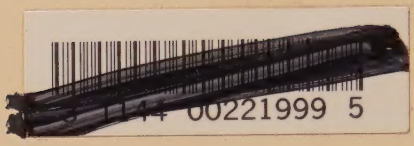
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